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Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 600 6

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 607 7

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS OF
THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS
OF AMERICA, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 608 8

LUMBER PRODUCTS ASSOCIATION, INC., ACME MANUFACTURING
CO., INC., EUREKA SASH, DOOR & MOULDING MILLS, ET AL.,
PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

No. 609 9

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES
COUNCIL, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 610 10

BOORMAN LUMBER COMPANY, HOGAN LUMBER COMPANY, LOOP
LUMBER & MILL COMPANY, ET AL., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED { NOVEMBER 11, 1944.
NOVEMBER 13, 1944.

CERTIORARI GRANTED JANUARY 2, 1945.

No. 10011

United States
Circuit Court of Appeals
For the Ninth Circuit.

LUMBER PRODUCTS ASSOCIATION, INC.,
a corporation, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

In Four Volumes

VOLUME II

Pages 477 to 947

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

EDWARD A. McCREEDY

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

I am treasurer of Grand Rapids Store Equipment Company, located in Grand Rapids, Michigan. The business is manufacture and sale of store fixtures. We have a subsidiary in Portland, Oregon, whose business is the same nature as our own. I handle the financing and assist in the general management of both companies, including some supervision over the sales. I know the Portland company had a contract to install certain fixtures at Roos Bros., in San Francisco, in the fall of 1936. I think the contract was made about October, 1936. I think the fixtures were finally installed in May or June, 1937. I met Mr. Dave Ryan in July of 1938 at the Sir Francis Drake Hotel. Mr. Harry Smith, our local representative, was present besides myself and Mr. Ryan. I called on Mr. Ryan because we had some trouble on the installation of the Roos Bros. job, and I came down to see if there was not something we could do to get that cleared up. I recall some of the conversation. As I recall it, I asked Mr. Ryan if there was not something we could do to get together on this thing so we could get more business in this district, because we had signed a union agreement and had a union label on our goods. I could not understand why we could have any trou-

(Testimony of Edward A. McCreedy.)

ble in getting it installed in this city. Mr. Ryan told me that they could not do that, because our labor rate that we paid in Portland was not on the same basis as the labor rate here, and unless our wage rate was the same they could not work with us on it. I asked him at that time if we couldn't work out [396] some arrangement whereby we could pay the San Francisco rate on such work as we shipped into this town, and he said he didn't think they would stand for that.

Since reading an excerpt from a letter I wrote to Mr. Swindells, President of our Portland Company, on August 20, 1938, I recall further details of this conversation with Mr. Ryan. At that time, I asked Mr. Ryan if there was any understanding with the local manufacturers here regarding getting our work in here, and he said that there was. Following the conversation with Mr. Ryan, I think in early September, 1939, I talked to Mr. Meadows, one of the vice-presidents of the Carpenters and Joiners Union, at the office of United Brotherhood in Indianapolis. He referred me to M. A. Hutcheson. I talked to both Mr. Meadows and Mr. Hutcheson,—Mr. Straayer, our general superintendent, was with me. I explained to Mr. Hutcheson the trouble we were having out here and asked if he could not help us on it, and Mr. M. A. Hutcheson said that was a matter that his father would have to take care of when he came back. I think he was in Florida. And he said he would take it up when he came

(Testimony of Edward A. McCreedy.)

back to the office and let us hear from him, but he said he saw no reason why we should have any trouble as long as we had the union label. I have been in correspondence with Mr. M. A. Hutcheson since then.

Government's Exhibit 166 for identification is copy of a letter I wrote to Mr. Meadows on September 6, regarding trouble we were having on the Penney job. Government's Exhibit 167 is the reply.

Letter marked 168 is copy of letter I wrote to our New York Manager, Mr. Lockwood, about the Penney matter. [397]

EDWARD A. McCREEDY

By Mr. Burdell:

Exhibit 170 consists of copies of letters between Mr. Hutcheson and me. The carbon copies are of letters sent by me to the general office and the originals are the answers received from the general office.

Thereupon plaintiff's Exhibits 166, 167 and 170, for identification, were introduced in evidence.

"Mr. Burdell: If the Court please, I desire to read the letters at this time. The first letter is a carbon copy dated September 6, 1938, addressed to Mr. S. P. Meadows, Second General Vice President of the United Brotherhood of Carpenters and Joiners of America.

(Testimony of Edward A. McCreedy.)

"Mr. S. P. Meadows

Second General Vice President

U. B. of C. and J. of A.

Carpenters Building

222 East Michigan Street

Indianapolis, Indiana.

"Dear Mr. Meadows:

We were advised today by the J. C. Penney Company that the San Francisco Local Union would not permit our equipment to be installed in their store in that city even though we did have a label, so it was necessary for us to wire our Portland Plant to cancel this order so that they could purchase same elsewhere.

Fortunately, due to our visit with you last week, I was able to advise our New York office that we had already discussed this matter with you but that owing to the fact that it might take some little time to work it out, it would be best to cancel this order so as not to inconvenience our customer.

I do hope you will be able to help us in this situation and that you will let us hear from you as soon as you have had an opportunity to discuss the matter with Mr. Hutchinson.

I wish to take this opportunity to thank you for the [398] courtesies extended to Mr. Straayer and me on our recent visit and hope that you will be successful in working out some satisfactory ar-

(Testimony of Edward A. McCreedy.)
rangement with the San Francisco Local.

Sincerely yours,

.....
Treasurer
GRAND RAPIDS STORE
EQUIPMENT CO.

“Mr. Burdell: This is an original dated September 9, 1938, on the letterhead of William L. Hutcheson, General President, United Brotherhood of Carpenters and Joiners of America, Office: Carpenters' Building, 222 East Michigan Street, Indianapolis, Ind.

‘September 9, 1938.

‘Mr. E. M. McCreedy, Treasurer,
Grand Rapids Store Equipment Co.,
Grand Rapids, Michigan.

‘Dear Sir:

‘This will acknowledge receipt of your communication of September 6th, wherein you relate the conditions confronting you in San Francisco and state you were advised by the J. C. Penney Company that the San Francisco Local Union would not permit your equipment to be installed in their store there even though you did have a label, therefore you wired your Portland plant to cancel the order.

It is regrettable that such a condition should develop, and if you will ascertain who it was that made such statement to the representative of the J. C. Penny Company that they would not install the fixtures, I assure you we will have the matter

(Testimony of Edward A. McCreedy.)

investigated, however, it is necessary that we have this information before we will be able to proceed in the matter.

Very truly yours,

M. A. HUTCHESON,

For the General President.

“Mr. Burdell: The next is a carbon copy dated September 23, 1938, addressed to Mr. Wm. L. Hutcheson, General President. [399]

‘Mr. Wm. L. Hutcheson, General President,
United Brotherhood of Carpenters and
Joiners of America
222 East Michigan Street
Indianapolis, Indiana

‘Dear Mr. Hutcheson:

‘I have your letter of September 9th and trust you will pardon me for the delay in replying as I have been out of the city for ten days.

‘As per your request, I have secured a letter from the J. C. Penney Company setting forth the facts in this matter and enclose herewith a copy of the same for your records and hope that with this information you will be able to make a proper investigation of this matter, because as I told Mr. Meadows early this month, we had a similar situation arise last spring on a shipment made from our Portland, Oregon, plant to San Francisco.

‘I gave Mr. Meadows all the details in connection with this matter and believe that if you would dis-

(Testimony of Edward A. McCreedy.)

cuss it with him you will be able to secure full information regarding the same.

'We trust you will let us hear from you soon as we are anxious to get this matter cleared up at the earliest possible date, because, undoubtedly, we will have further shipments for the J. C. Penney Company in this same territory and we do not want to inconvenience our customer again.

'Naturally, when our customers specifically state in their orders that the goods must bear the union label, having a contract with your union, naturally, we accept the orders because we were under the impression that having signed a contract with your union, all of your locals in the United States would recognize your label; but such does not seem to be the case, as we have recently had some of our former customers in St. Louis and Cleveland tell us that your local unions at those points had made the statement to them that they would not install our fix- [400] tures even though they did bear the union label.

'We have done our part in carrying out the provisions of this contract and feel that immediate action should be taken by you to remedy this situation.

'Appreciating your early advice, we remain

Yours very truly,

**GRAND RAPIDS STORE
EQUIPMENT CO.**

.....
Treasurer.'

(Testimony of Edward A. McCreedy.)

"Mr. Burdell: Next is another carbon copy dated September 27, 1938, addressed to Mr. William L. Hutcheson, General President:

"Mr. Wm. L. Hutcheson, General President
United Brotherhood of Carpenters
and Joiners of America
222 East Michigan Street
Indianapolis, Indiana.

"Dear Mr. Hutcheson:

"Since writing you on September 23rd we are in receipt of a letter from our Portland Plant advising that they have been asked to figure on a job for the Hastings Store in San Francisco, California, and are writing to inquire as to whether or not they should put in a figure on this job in view of the difficulty we were having with your local union on the J. C. Penney job.

"As we are anxious to figure this work if possible, we would appreciate hearing from you at your earliest convenience as to whether or not we can count on your support should we be successful in securing this work.

"Appreciating an early reply, we remain
Cordially yours,

.....
Treasurer.

GRAND RAPIDS STORE
EQUIPMENT CO."

(Testimony of Edward A. McCreedy.)

“Mr. Burdell: The next is an original on the letterhead of Wm. L. Hutcheson, dated September 29, 1938, addressed to Mr. E. A. McCreedy, Treasurer. [401]

September 29, 1938.

Mr. E. A. McCreedy, Tres.
Grand Rapids Store Equipment Co.
Grand Rapids, Mich.

Dear Sir

“I am in receipt of your letter of September 23, wherein you enclose copy of letter from the J. C. Penney Company and it would be very helpful to us if we had the name of the party connected with our Union who informed the J. C. Penney Company in San Francisco that your fixtures would not be installed in their store.

“For your information will say that I am immediately *bring* this matter to the attention of one of our general representatives to see if he can get to the bottom of the thing and straighten out the situation in a satisfactory manner.

Faternally yours,

S. P. MEADOWS,

For the General President.’

“Mr. Burdell: Next is also an original on the letterhead of William L. Hutcheson dated September 29, 1938, to Mr. E. A. McCreedy, Treasurer, Grand Rapids Store Equipment Company, Grand Rapids, Michigan.

(Testimony of Edward A. McCreedy.)

'Dear Sir:

'Replying to your letter of September 27th with reference to figuring on a job for the Hastings Store in San Francisco, California, will say that I am immediately forwarding your inquiry to First General Vice President M. A. Hutcheson, requesting that an immediate reply be made so you will be in possession of the information you desire.

Very truly yours,

S. P. MEADOWS,

For the General President.'

"Mr. Burdell: Next is a carbon dated October 18, 1938, [402] addressed to Mr. S. P. Meadows, Second General Vice President.

'Mr. S. P. Meadows,
Second General Vice President
United Brotherhood of Carpenters
and Joiners of America
222 East Michigan Street
Indianapolis, Indiana.

'Dear Mr. Meadows:

'Having heard nothing further from you since your letter of September 29th, I am writing to inquire as to whether you have heard anything further on the situation in San Francisco as we now have another job that we are figuring on in that city on which we believe the merchant will demand a guarantee that the union will not interfere and, of course, you can appreciate this puts us in a rather

(Testimony of Edward A. McCreedy.)

awkward position in view of our recent experience there.

'Consequently, we would appreciate your early advice in this matter.

'Trusting to hear from you shortly and with kindest personal regards, I remain

Cordially yours,

.....
'Treasurer,
GRAND RAPIDS STORE
'EQUIPMENT CO.'

"Mr. Burdell: The last is an original on the letter of William L. Hutcheson dated October 20, 1938, addressed to Mr. E. A. McCreedy, Treasurer, Grand Rapids Store Equipment Co., Grand Rapids, Michigan.

'Dear Mr. McCreedy:—

'Your communication of October 18th in which you make inquiry concerning your letter of September 29th has been received. The reason we delayed answering your former letter was owing to the fact that we were having an investigation made in an endeavor to learn just who gave out the information that the material for the J. C. Penny Job would not be erected, and our representative reports that he has been unable to find anyone [403] connected with the Penny Company who had been given this information.

'With reference to shipping the material for the present job which you are now making up, we see no reason why you should hesitate to ship that ma-

(Testimony of Edward A. McCreedy.)

terial whenever you see fit to do so, and we are sure you will have no difficulty in having your fixtures installed.)

Yours very truly,

M. A. HUTCHESON,

For the General President.

We didn't correspond any further because we seemed to be getting no where. We do not have a contract with the J. C. Penney Company to do all of its work, but we get blanket orders from them. The particular order referred to in my letter was cancelled. I testified to a conversation with Mr. Ryan that took place in 1938. I had another one in the latter part of May, 1939, at the Sir Francis Drake Hotel. No one was there besides myself and Mr. Ryan.

I brought up the same old subject and asked him if there was anything further we could do to correct that situation and he said there was not, that everything was just about the same as it was at the time of our last meeting in 1938. I do not recall at this conversation there was any mention of the agreement referred to in the previous meeting with Mr. Ryan.

At the time of the meeting we had no sales connection in San Francisco. We had a salesman here who was Mr. Harry Smith. We do not have a salesman here at the present time. We have a sales connection with the Unit-Built Store and Fixture Company. They operate under a license agreement. That

(Testimony of Edward A. McCreedy.)

arrangement was made by Mr. Young, our president. I know the details surrounding it and why it was made. [404]

Cross Examination

By Mr. Faulkner:

In 1936 I held the same position with Grand Rapids Company I hold now. I am with the parent corporation, the Michigan corporation. We have a Grand Rapids Company at Portland and a branch of the Grand Rapids Company in Los Angeles.

I did not participate in the Roos Bros. transaction in 1936. I knew of the existence of the contract. The fixtures were to be installed in the Sports Wear Department, consisting of show cases, wall cases, counters and things of that nature. I think they are oak fixtures. I saw them after they were installed, glass and woodwork. If there are reflectors in the show cases we may have put them in. We received one order for installation for Roos Bros. in October, 1936. I don't know the range of the bids.

My trip to San Francisco and talk with a Union representative was in July, 1938, after the Roos Bros. job was in. My first talk to a Union representative was in July, 1938.

The Penney transaction did not take place until the first of September of that year. I know we have a contract for the preparation of fixtures for the Penney Company in certain districts. I know other fixture companies have contracts with the

(Testimony of Edward A. McCreedy.)

Penney Company in other districts. I know that in San Francisco Unit-Built Fixture Company had a contract with the Penney Company for this district. In 1938 I think the premises involved in the J. C. Penney matter was at South San Francisco.

My conversation with Mr. Ryan was after the Penney transaction in May of 1939, that is the second conversation. The first was in July, 1938. The Penney transaction was a little later in 1938. The first conversation with Mr. Ryan did not relate to the Penney transaction.

At the time of the first meeting I came to the Sir [405] Francis Drake Hotel and sent for Mr. Ryan. I asked him why we were having trouble.

I do not think it was always the case that our prices were higher than the local commercial fixtures here, that might have been the case on some occasions, it frequently is on any job we have. I am not familiar with the price on the Roos Bros. job. I am not familiar with the effort of our company to secure the work concerning the Joseph Mag-nin Company. I remember hearing something about it, but I know nothing of the details. I don't know that the Grand Rapids Company bid was \$13,000.00 and the job was let to the Emanuel Company, and the Unit-Built Company for \$9500.00.

We include in the work of our company the matter of designing the work for installation. After designing a particular job the practice is to make a bid. If the bid is accepted we manufacture a

(Testimony of Edward A. McCreedy.)

great deal of it in Portland or Michigan, and it is then shipped into the district wherever we are to make the installation. Usually we have local union labor, local carpenters, make the installation. That was true in 1936 up to 1940.

In 1936 we did not have a working arrangement with Ful-Vue Fixture Company. Mr. Smith was our representative in this district. Not in connection with his own business, that we knew of.

In 1940 we had an arrangement with Unit-Built Fixture Company, that is the company that Mr. Roselyn is with. In 1940 the relation was that they were operating under a license agreement, whereby we licensed them to manufacture our type of equipment on a royalty basis.

I don't think one of our problems in this market was lack of facilities to complete the entire job, close to the job. Our articles, manufactured in either Michigan or Portland, [406] came by rail crated. One of our problems in meeting competition in this district was the freight rate on transportation of the articles from the place manufactured to the place where they were to be installed.

Mr. Roselyn has not, that I know of, of my own knowledge, bought quite a quantity of our equipment. Those orders go through our Portland office. The Portland orders do not pass through my hands. I do not know about the Gump job.

Many of our fixtures are patented. It is in connection with those patented fixtures that we have

(Testimony of Edward A. McCreedy.)

licensed Unit-Built Fixture Company, to not only install, but to build. The general practice has been to install the fixtures with local labor, with one of our construction or installation superintendents.

I think I mentioned the Penney installation to Mr. Ryan on my second visit there. I did have a conversation about it with Mr. Meadows and Mr. Hutcheson in Indianapolis. The conversation with Mr. Ryan was after the event, in May, 1939. The Penney matter was up in the first of September, 1938. In 1938 the Grand Rapids Company cancelled an order for installing fixtures in the Penney Company in South San Francisco.

During the period the transaction was pending, I did not talk to any Union representative myself, only Mr. Ryan. I may have mentioned it to Mr. Ryan in 1939, when I was here, but I had only correspondence with the Union, which has been read in evidence. I did not have any conversation with a local union man in connection with the J. C. Penney job in South San Francisco at the time the order was cancelled.

They told us they wanted the order cancelled because they had been told by the Unions they would not install it. That was on a teletype message to me from our New York manager. We also have a letter from the Penney Company. No one from the [407] Penney Company told me why that installation was not made.

“Mr. Routzohn: We ask, your Honor, all of this

(Testimony of Edward A. McCreedy.)

conversation be ruled out as being incompetent, irrelevant and immaterial and hearsay.

"The Court: Motion is denied."

Mr. Wieland of Penney Company was in our office after that happened. I think he talked about it to me and also our general superintendent, Mr. Straayer. I don't know whether the Penney Company installed in the South San Francisco Store the fixtures in the Vacaville store.

Cross Examination

By Mr. Routzohn:

I would say that local union carpenters have not installed our work where we have made sales in San Francisco in all instances, but Penney Company was one instance. Any installation work that has been done in this territory for us has been done by Union men. We had a sale in the Penny instance that was not installed. All work that has been installed in the San Francisco territory has been installed by Union carpenters.

I saw Mr. Ryan one time in July, 1938, again in May, 1939. I knew there was some talk about a change in wages here when I talked to him in July, 1938, I didn't know about an arbitration proceedings. I don't recall Mr. Ryan discussing that with me. I didn't know by the discussion with Mr. Ryan, or in any other manner, that the arbitrators had incorporated Paragraph 8 in their arbitration award. Mr. Ryan didn't state this was a written

(Testimony of Edward A. McCreedy.)

agreement he had, starting back in 1936, with the employers.

I testified Mr. Ryan talked to me about an agreement with the local manufacturers relative to the wage scale in this [408] locality. I didn't know about a written agreement between the Unions and the local manufacturers. I understood him to say they had an understanding with the local manufacturers. He told me about the condition that they would not work on material that had not been made under prevailing conditions in San Francisco, but he did not say anything about a written agreement.

Mr. Ryan told me that the agreement with the local manufacturers was to the effect they would not set up any equipment not manufactured under similar conditions that exist in the Bay Counties District, that is what I wrote in my letter to our president. The wage scale in Portland, Oregon, was lower than the wage scale in San Francisco in 1938.

Redirect Examination

By Mr. Burdell:

We do business all over the United States. We ship all over the United States by railroads and trucks. Freight or trucking rate is a competitive factor all over the country, not only in San Francisco.

I talked to Mr. Wieland about the Penney job, in Grand Rapids, when he was there. The labor problem must have been discussed. He told me it would

(Testimony of Edward A. McCreedy.)

be necessary to cancel the job only because of the fact that they would not install it here. That is at least one reason for cancellation.

"Mr. Routzohn: Your Honor, we ask that all this be stricken out. I objected to it once before and your Honor did overrule me, but again I would like to make the motion so we can get it in the record."

"The Court: Very well."

"Mr. Routzohn: I ask all this be stricken out as to what somebody in his own concern told him, as being purely hearsay and not binding in any way on these defendants."

"The Court: Denied." [409]

We have had an arrangement with Unit-Bilt Fixture Company since June, 1940. They are permitted to manufacture equipment under our patents on a royalty basis. They purchased some equipment from our Portland Plant. I don't know how much work they have purchased since 1940.

Exhibit 174, for identification, is a letter from Mr. Lewis of the construction department of J. C. Penney Company of New York City, addressed to the Manager of our New York office, confirming the telephone conversation as to cancellation of this order. It is from J. C. Penney Company to our Company in regard to the Penney job.

"Mr. Burdell: I offer this in evidence."

"Mr. Faulkner: We object to it, your Honor, as hearsay."

(Testimony of Edward A. McCreedy.)

"The Court: Overruled.

"Mr. Rontzohn: Same objection.

"Mr. Faulkner: May I call your Honor's attention particularly that this is a letter from a man named Lewis of the Penney Company to the Grand Rapids Company quoting a telegram from somebody else.

That is all hearsay as to the defendants.

"Mr. Burdell: Well, it is the telegram from the J. C. Penney Company, the telegram is quoted."

"The Court: Overruled.

(The letter was marked "U. S. Exhibit No. 171.")

"Mr. Burdell: I will read it, if I may, at this time.

"The Court: Read it.

"Mr. Burdell: On the letterhead of J. C. Penney Company.

"J. C. Penney Company Incorporated, 330 West 34th Street, New York, N. Y.

September 17, 1938

"Grand Rapids Store Equipment Company
420 Lexington Avenue
New York, N. Y."

"Gentlemen:

Attention:—Mr. Lockwood [410]

"Concerning our telephone conversation, we are pleased to quote you verbatim the telegram received from our District Office in reference to the South San Francisco store fixtures:—

(Testimony of Edward A. McCreedy.)

'Union served notice they will not handle Grand Rapids or Weber fixtures for South San Francisco store. Insist fixtures must be made under same conditions wages as Frisco area regardless of union stamp'.

"We trust this is the information you desire.

Yours very truly,

J. C. PENNEY COMPANY, Inc.

H. C. LEWIS,

Construction Department.'

And the signature "Harold C. Lewis,"

"Mr. Routzohn: Your Honor, I move all of this be stricken out for the reason that it is sheer hearsay and that the defendants in this case have no opportunity in the world to answer that sort of an assertion.

"The Court: Denied.

"Mr. Routzohn: By "opportunity," I would like to correct my statement, that we have no way of meeting or ascertaining who made the statement or of tracing it down in order to contradict anything that is stated in there.

"The Court: Well, your client knows whether or not that statement is true.

"Mr. Routzohn: How could he know, if the Court please?

"The Court: Don't argue.

"Mr. Routzohn: We don't know who solicited for the Penney Company. We don't know who

(Testimony of Edward A. McCreedy.)

talked to a solicitor for the Penney Company. We have no way of ascertaining the basis of that statement or who had anything to do with it.

"The Court: All right. Your objection is overruled." [411]

Re-cross Examination

By Mr. Faulkner:

I received a communication from my office in October, 1938, in which my office pointed out that they had not been informed of who the Union representative or delegate was who had talked about the Penny job. I don't know that it was the fact they had not been informed. The correspondence would indicate that nobody knew who the person was who made the remark about installing the J. C. Penney job. It is true that the correspondence is predicated upon a claim that some Union representative said they could not install a job and nobody knew who the man was who made the statement. Our correspondence is based on what the Penney Company told us, and the Penney Company didn't know who the man was, according to our correspondence, that they talked to.

Thereupon there was introduced in evidence minutes of Alameda Counties Building Trades Council, previously identified as "Exhibit 104".

"Mr. Todd: Your Honor, this may be subject to the objection originally made that these are records produced from a defendant in the action against its will.

"The Court: What is that, Mr. Todd?

"Mr. Todd: I say, it is subject to the objection that we made that these are records of the defendant in the action/produced without their consent and without their stipulation of having an individual take the stand.

"The Court: Overruled.

"Mr. Todd: I believe the objection was previously made, but I wanted to be sure.

"The Court: Yes. Overruled.

"(The minutes were marked "U. S. Exhibit No. 104.")

"Mr. Howland: Referring to the exhibit marked for identification as 104, I will read from page 89 thereof, which is a [412] part of the minutes of the meeting of the Alameda Building and Construction Trades Council of February 1, 1938; under the heading Communications, the following appears:

"From Millmen's Union No. 550. Protesting the importation of special run matched end T&G as it is a direct violation of their agreement with the mill owners and should be manufactured in the Bay District, and therefore requested the assistance of the Council in the matter. Received and the request ordered complied with."

"At page 90 of the same exhibit, from the minutes of the meeting of February 8, 1938, under the heading New Business, the following appears:

"Brother Mike Cicinato president of the Millmen's Union No. 550 was a visitor at the meeting

and called attention of the Council to the fact that the Millmen's Union were going to fight against the importation of special run matched end T&G as it is a direct violation of their agreement with the mill owners and should be manufactured in the Bay District.'

"On page 92 of the same exhibit, the minutes of the meeting of February 22, 1938, under the heading Communications, the following appears:

"From Millmen's Union No. 550 advising the Council that the question of importation of matched end T&G has been referred to the General Office of their brotherhood and requested that no action be taken by the Council. Filed.'

A "Page 106 of the same exhibit, from the minutes of the meeting of June 7, 1938, under the heading Reports, the following appears:

"Business representative J. Reynolds and Glen Hawkins rendered their weekly report which was accepted, Hawkins also recommended that the Council concur in the action of the Teamsters and Clerks and Lumber Handlers in enforcing their [413] agreement wherein no lumber can be shipped directly from the North to the job. The recommendation was concurred in.'

"At page 179 of the same exhibit from the minutes of the meeting of March 5, 1940, under the heading Reports, the following appears:

"Business representative Charles Roe also rendered his weekly report which was accepted and

recommended that Mr. Harvey Brown of the Aladdin Ready-Cut Houses, 2605 East 14th Street, Oakland, be cited to appear before the board of business agents to show cause why he should not be placed on the official 'unfair' list of the Council. Recommendation concurred in.

"At Page 181, from the minutes of the meeting of March 12, 1940, under the heading Board of Business Agents Report, the following appears:

"'No. 1. That further investigation be made by the Carpenters Representative and the Council pertaining to the Aladdin Ready-Cut Homes.'"

Thereupon letter from files of Fink & Schindler Company, identified as "Exhibit 57-4", was introduced in evidence as 57-4, and was read to the jury, being letter from Commercial Fixture and Store Front Institute, Inc., signed J. G. Ennes, Manager, as follows:

"Gentlemen:

"Please attend special meeting Monday, January 30, 1939, 4:00 p. m. sharp.

"To liquidate the Cabinet Manufacturers Institute of California, Northern Division:

"To sign the register for the Commercial Fixture and Store Front Institute (Inc.);

"To receive report on proposed sales tax ruling;

"To discuss and act on other matters of importance.

"Please take note that your failure to respond

and sign [414] the register might cause you to fail to receive such benefits as might be derived through signing same.

Yours very truly,

COMMERCIAL FIXTURE
AND STORE FRONT
INSTITUTE, INC.,

By J. G. ENNES,
Manager."

Similar letter from the files of Mangrum, Holbrook & Elkus was introduced as plaintiff's "Exhibit 60-7".

The same letter from the files of L. & E. Emanuel, Inc. was introduced as "U. S. Exhibit 93-6."

Thereupon letter, identified from the files of L. & E. Emanuel, Inc., from Commercial Fixture and Store Front Institute, Inc., relative to solicitation of subscriptions by the San Francisco Employers Council, was introduced as Exhibit 93-5 and read as follows:

"Gentlemen: The San Francisco Employers Council is soliciting subscriptions from individual shops. They provide for individual memberships or trade association memberships. I am of the opinion the shops should not take out individual memberships.

"If membership is to be taken out it should be an association membership. This in view of the

fact that our labor relations are on an association basis.

Very truly yours,

**COMMERCIAL FIXTURE
AND STORE FRONT
INSTITUTE, INC.,**

By J. G. ENNES,
"Manager."

Thereupon copy of contract of June 15, 1938, from the [415] files of L. & E. Emanuel, Inc. was introduced as plaintiff's Exhibit 93-34.

Thereupon correspondence between M. A. Hutcheson, First Vice-President of the United Brotherhood and D. H. Ryan, Secretary of Bay Counties District Council was introduced in evidence as plaintiff's Exhibits 115-57, 115-58, and 115-59.

"Mr. Howland: The first of these letters marked 115-59 is on the letterhead of the United Brotherhood of Carpenters and Joiners of America, dated June 5, 1938, addressed to Mr. D. H. Ryan, Secretary, Bay Counties District Council, 200 Guerrero Street, San Francisco, California, and bears the stamp signature of M. A. Hutcheson, First General Vice-President:

'Dear Sir and Brother:

'Yours of May 6th enclosing copy of agreement your council entered into with the Associated General Contractors for the two years beginning May 1, 1938 and ending May 1, 1940, has been received and contents noted with interest.

‘This agreement is being made a portion of our records for future reference.

‘As soon as the agreement is entered into with the Cabinet Manufacturers Association and Planing Mills on both sides of the Bay be sure to forward this office a copy of same, along with a list of the concerns that are parties to this Association, and governed thereby.

‘Fraternally yours,

M. A. HUTCHESON,

First General Vice-President.’

“The second letter, marked in evidence 115-58, is a letter also to Mr. Ryan from M. A. Hutcheson dated July 7, 1938, and the text of this letter is as follows:

‘I In your communication of June 22nd you assured us that an agreement was about ready for signature with the mills and shops in your district, but up to the present time we have not received [416] a copy of the agreement referred to therein.

‘Kindly let us have a copy of this agreement along with a list of the concerns that are signatory to this agreement, or the names of the firms that will be governed thereby.

‘Yours Fraternally,

M. A. HUTCHESON,

First General Vice-President.’

“The third letter, which is marked 115-57 is a letter on the letterhead of the United Brotherhood

of Carpenters and Joiners of America, addressed to Mr. D. H. Ryan, from Mr. M. A. Hutcheson, is dated August 24, 1938, and reads as follows:

“Dear Sir and Brother:

“Late in June you notified this office that your Council was about to reach a satisfactory agreement with the Mills and Shops in your District, but since that time we have failed to hear anything further from you along this line, therefore I am writing to request that you forward me a copy of the agreement entered into, and at the same time furnish us with a list of all the mills and shops that are parties to this agreement, as we cannot permit our label to continue to be used upon the products of a concern in an indefinite manner that is not operating under a signed agreement that is satisfactory, and on file at this office.

‘Awaiting your reply, I remain,

‘Yours fraternally,

M. A. HUTCHESON,

First General Vice President.’ ”

Thereupon four booklets, marked Exhibits 44 to 48, inclusive, for identification, were introduced in evidence as plaintiff's Exhibits 44 to 48.

“Mr. Howland: The booklet marked Exhibit 48 is dated January 1, 1936, and states on the opening page “List of Union Shops and Firms who are using our label on their products,” [417] and on the second page the following appears:

“This list gives the names of all firms having the use of the United Brotherhood label according to the information on file at the general office at the present time. It is subject to change as any firm failing to live up to the agreement under which the label was granted its use is immediately deprived of same.”

“Then on pages 5 and 6 of this booklet, under the heading “California and San Francisco,” the names of the following firms appear: William Bateman, Braas & Kuhn, L. & E. Emanuel, Exposition Woodworking Co., Fink & Schindler Co., Ful-Vue Fixture Co., Mangrum & Holbrook Company, Mullen Manufacturing Co., Ostlund & Johnson, H. Schulte & Son, Unit-Built Fixture Co.

“Mr. Faulkner: The names you read, among others appear?

“Mr. Howland: Yes, there are many other names in the book besides the ones I have read.

“The Court: Proceed.

“Mr. Howland: The other four books, if your Honor please, I will not read. Exhibit 47 is a similar list dated January 1, 1937, Exhibit 46 is a similar list dated January 1, 1938, Exhibit 45 is a similar list dated March 1, 1939, and Exhibit 44 is a similar list dated March 1, 1940. All of these books, and I will not take the trouble to read them, contain listed among other names the names which I have just read, and, in addition, under the heading “California, Oakland,” these four also contain the

name of S. Kulcher & Company, which did not appear in the 1936 book."

E. G. HOSKEN,

called as a witness on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell: [418] :

I am sales manager for Grand Rapids Equipment Company at Portland. We are affiliated with Grand Rapids Company of Michigan. I joined the company in 1912, and was made sales manager in 1922. I have been sales manager ever since, except for a period from 1931 to 1934, when I was with Weber Showease & Fixture Co., in Southern California. I am also a designer. We are able to sell our products by designing them first and selling the equipment shown in the designs. I do both designing and installing.

In 1936 I did some designing in connection with anticipated bids with Roos Bros. in San Francisco. There were three major programs. I was called in by Mr. Roos about May, 1936, and he outlined the entire program they were contemplating, and in view of the fact we had done considerable work for Mr. Roos, always on a satisfactory basis, he asked me if I would be willing to design and merchandise

(Testimony of E. G. Hosken.)

the Men's Sporting Wear, Boys' Clothing Department on the Fifth floor, the Men's Clothing on the Fourth, which I agreed to do. I was at that time instructed very emphatically I was to work with Mr. Albert Williams, who was appointed the architect by Mr. Roos.

After the designing my company submitted bids for the installation and sale of work to go into those three jobs. The first bid was Men's Sport Department. The Walter Manufacturing Company obtained that contract. We furnished practically the major portion of that contract. The Walter Manufacturing Company furnished the sub-contract work, which was more or less special with us. It consisted of partitions, beams and odds and ends, which we would be better equipped to manufacture from our plant than in Portland, which would manufacture stock items. The work furnished consisted of wooden fixtures, showcases, wall cabinets, clothing cabinets, suit shelves and all items kindred to the department they were to house. We furnished the material for the [419] major portion of the work.

The bid for the Men's Sports Department was about \$46,000.00. We were about \$10,000.00 low on that average bid. I would say that 90 per cent or thereabouts of the material was furnished by Grand Rapids.

The two other jobs I designed were the Boys' Department on the Fifth Floor and the Men's Depart-

(Testimony of E. G. Hosken.)

ment on the Fourth floor. We bid on those jobs but did not obtain contracts. Our bid on the Boys' Department was \$38,000.00 and the average bid was \$19,000.00. On the Men's Department our bid was \$83,000.00 and the average bid was \$50,000.00. I bid directly from Grand Rapids and submitted my bid to Mr. Williams and Grimes. I had known Mr. Emanuel for several years.

I recall a conversation with him in November, 1937, or thereabouts, I think at Roos Bros. store. We were discussing the store and how nice it looked and then he made a remark to me about the Union situation with us here, and he said, "I was delegated to act as a sort of a go-between to negotiate between the Unions and the Manufacturers;" "do not think we took this wage increase that the Unions demanded laying down, because I had several conversations with them, and I tried to negotiate a better deal." He further said that any agreement on the wage scale, that it was the object of the Union that they would not allow outside manufacturers to come in, and that the Union would not install equipment that came from where the wage scale was lower than the wage scale prevailing in the San Francisco Bay Area. He further stated that applied for molding—other items than mill-work. That is the only time we discussed the situation.

After the Roos Bros. job we secured practically nothing in the San Francisco Bay Area. We had

(Testimony of E. G. Hosken.)

a salesman in the San Francisco Bay Area, Mr. Harry Smith. He doesn't still act for us. His connection was severed about June, 1940. [420]

I met Mr. Ryan once, around July, 1939, it was in Mr. Williams' office, who made the appointment at my request. Mr. Williams, Mr. Ryan, Mr. Smith and myself were present. I asked if there was any change in the situation and Mr. Ryan said there was not. I mentioned to Mr. Ryan I had a job I was figuring on with Weinstein and whether I should spend any more time in trying to get that job. I would not do it if I was going to be handicapped. He told me the situation was just the same, they would not allow the men to install any of our equipment that had a lower wage scale than that which was prevailing in San Francisco. He didn't mention the agreement, all he said was that he would not permit his men to install the finished goods, they needed the work here.

We have had a sales outlet in the San Francisco Bay area through Unit-Built Fixture Company since June, 1940.

Mr. Smith severed his connection with the company at that time.

There were three separate jobs at Roos Bros. to bid on. There were others in addition we did not bid on. They were women's wear, millinery and shoes and the First floor of the Men's furnishings. The other bids were awarded after the Sports Shop contract was awarded. The job was figured completely installed.

(Testimony of E. G. Hosken.)

Cross Examination

By Mr. Faulkner:

The bid of \$46,000.00 on the Men's Sport Department was prepared by figures furnished from Portland, Oregon, and the bid we received from Mr. Jacobi of Walter Manufacturing Company. We submitted the bid. Grand Rapids bid on it in connection with Walter Manufacturing Company. I laid it out in connection with Mr. Williams. That which we bid on was the fulfillment of those designs. I was not paid for that designing. [421]

When I made the design I was only assured by Mr. Roos that, all things being equal, I would be given a portion of the business. I mean conditions being equal. That was the reason for my giving that service.

The job was figured installed and it would be done under local conditions by our own firm if we were successful. We installed our own work in the Men's Sports. In the Sports Shop Walter Manufacturing Company did not install our own equipment, they built the beams and some of the partitions, the stock rooms and all special work we didn't manufacture as a stock item. Grand Rapids actually installed their own work. Walter Manufacturing Company were connected in our work to get the Fourth floor bid, too. On the Fifth floor bid we were, if successful, to do our own work and Walter was responsible for his installation. His portion, however, was cov-

(Testimony of E. G. Hosken?)

ered in our \$38,000.00 bid, and his installation was covered in our \$83,000.00 bid. We were \$33,000.00 high in one instance and \$19,000.00 high in another.

In addition to the work on the Fourth and Fifth floors and the Men's Sport awarded to us, there were three other alterations we did not bid on. They were the Women's Sports Wear, Apparel floor, and the First floor.

I am not familiar with the remodeling of a carriage entrance. The design was done in 1936, the contract for the Men's Sport Shop was let in October, 1936, and fulfilled in 1937.

I cannot give you the name of any individual bidder on the job awarded to us; I was told we were \$10,000.00 lower than any other competitive bid. I never saw a bid \$10,000.00 higher. I only know from information that was furnished me. I wrote the bid out and signed it. Electric fixtures went in with the equipment. We got a very, very small amount of work [422] in this area after the Roos Bros. job.

The major portion of our business is equipment for Ever Ready Shops and Department stores, but we manufacture from the quality of an Austin to a Cadillac. We do manufacture primarily for Ever Wear Shops and Department stores. I have heard that in this particular area a great many of the department stores have their own cabinet shops and do their own work. I know some of the stores do. I don't know whether they all do. I wouldn't say.

(Testimony of E. G. Hosken.)

we are handicapped in competing with the commercial fixture people in this district because customers require a complete job which we are unable to give.

There are many instances where it is not necessary to have sub-contractors. In some instances we have to have sub-contractors if the designs call for sub-contracts. I have been successful to do that on an equality with firms in this district heretofore. I wasn't successful in the Roos Bros. job.

As an aggregate our bids totaling \$167,000.00 and the total bid for the local people on the same work, was \$125,000.00. A \$42,000.00 difference. There is no doubt that is why we didn't get the work.

I am not familiar with the Joseph Magnin job.

I have been with the firm since 1934. My territory is ten states and many times I am not here when the jobs go on.

I don't know anything about the Prussia job in San Francisco.

"Q. Mr. Hosken, there is not any question, is there, that during the period of time that you were representing the Grand Rapids people in Portland, Oregon, and this district that you were consistently being underbid by the local people?

"Mr. Burdell: I object to that.

"The Court: What is the objection?

"Mr. Burdell: I object to the question as immaterial, [423] calling for the opinion and conclusion of the witness.

(Testimony of E. G. Hosken.)

"The Court: Sustained."

Designing service is part of our business. It is likewise part of every person's business in competition with us.

Mr. Emanuel told me that he was elected to negotiate controversy over the wage scale; not elected, but that he assumed that duty. The words he used, as I recall, that the others did not seem to take exact interest, and that he apparently was more interested and he represented the other manufacturers. I believe it was in 1937 he told me that, because I met him in Roos Bros., in fact I met him several times at Roos Bros. I met Mr. Emanuel most every week, because there was a meeting held by Mr. Roos, Mr. Al Williams, Mr. Emanuel, and I believe, a man by the name of Fairweather, and myself. Met once a week and discussed the progress and plans that were being made. I know Mr. Emanuel got the Boys' Department. I don't know what his bid was, the average bid was \$19,000.00.

Redirect Examination

By Mr. Burdell:

The conversation with Mr. Emanuel, as I recall it, was after the job, because I was going through the store and naturally was proud of the department we had done.

Estimates in bids in other parts of the country included designing. That is the way we sold our product in the majority of cases.

H. P. SMITH,

called as a witness in behalf of the plaintiff, was duly sworn, and testified as follows:

Direct Examination

By Mr. Clark: [424]

I am in the fixture business and have been for a number of years, about 1902. I am with Unit-Bilt Store Equipment Company and have been since June 1, 1940. I was with Grand Rapids Store Equipment Company before that, starting in 1916. I was representative, distributor, salesman, in Salt Lake City until 1925, and in San Francisco and Northern California since that time. There was a period, I think 1931 until 1935, that the Company was not operating in this territory. I represented them as a salesman here in 1936.

I had dealings with reference to the contract with Roos Bros. I contacted Mr. Robert Roos regarding their contemplated improvements, and after considerable negotiations and conferences, requested the company in Portland to send down their salesmanager and chief designer, Mr. Hoskens.

Grand Rapids Store Equipment Company presented the bid on the Sports Shop, as I recall, in October of 1936. It was filed with Mr. Williams of Williams & Grimes, architects for the store. The contract was actually signed by Mr. Hosken. After it was awarded I followed through in my usual way. Between the time the contract was awarded and the equipment was installed, something came up with

(Testimony of H. P. Smith.)

reference to its installation. The equipment was installed.

We bid on other work with Roos Bros. but were not successful in that.

While I was salesman in 1938, Mr. McCreedy came here. He was with the company in Grand Rapids, the home office. I arranged a conference between Mr. McCreedy, Mr. Ryan and myself in the Sir Francis Drake Hotel. It was about July of 1938, June or July, in the summer.

Between completion of the Roos job and this conference I had not gotten any other jobs in this area for the Grand Rapids Showcase Company. The meeting took place in the morning, [425] around 9:30, and after a general conversation Mr. McCreedy asked if there was any way in which the trouble that had existed in the past could be ironed out relative to the Union's objection to shipping material into this territory. Mr. Ryan went on to explain that he saw no way in which that condition could be corrected. I cannot recall the exact words, I can only give it in substance.

Mr. Ryan said that around 1934 conditions commenced to pick up in San Francisco, after the so-called depression that had prevailed in the past two or three or four years; that he thought it was a good time to consider the idea of entering into a certain agreement or understanding regarding wage scale pertaining to the millmen and the cabinetmakers of San Francisco, and that he approached the vari-

(Testimony of H. P. Smith.)

ous trades and submitted a proposition, as I recall it, of \$1.12½ an hour wage scale. He said when this was first presented to the millmen and cabinet makers they seriously objected that if they would consent to pay any such wage scale as that, they would be entirely out of the running so far as outside manufacturers were concerned who were operating under a lower wage scale. He stated after a number of weeks of conferences and discussions that finally the various millmen and cabinet manufacturers stated they were willing to concede a reasonable wage scale, provided some way could be worked out that would protect them against outside competition, manufacturers who were operating under a lower wage scale; that after considerable further discussion an understanding or agreement was entered into, I forget just the word he said, whereby the local employers agreed to a wage scale which was satisfactory to the Unions, provided the Unions would protect them on outside competition.

Mr. McCreedy then brought up the question, "Well, Mr. Ryan, don't you realize that that is against the law? It [426] is a restraint of trade?" And Mr. Ryan said, "Yes, we realize that fact, but nevertheless we are going to proceed along these same lines until such time as the Government stops us."

Finally Mr. McCreedy said to Mr. Ryan, "Well, I will be willing to enter into an agreement with you fellows whereby our company will agree on any

(Testimony of H. P. Smith.)

equipment sold and shipped into the Bay Area, we will agree to manufacture it under the same prevailing wage scale as exists in San Francisco at the time the equipment is shipped." Mr. Ryan said, "No, I could not enter into an agreement of that sort." Mr. McCreedy said, "Why, the only trouble seems to be you are objecting to our operating up in Portland under a lower wage scale than prevails here; I do not see why you should object if we manufacture our equipment and ship it into this territory under the same prevailing wage scale, it seems to me that would eliminate your objection." Mr. Ryan said, "No, I could not consider that", or "We could not consider it." He said, "In the first place, we would never be able to convince the manufacturers here in San Francisco that such an agreement actually existed." Mr. McCreedy said, "Well, the Unions have a right to come into our factory and inspect our books, inspect our records, and so on, and they have access to all of our records pertaining to the employment of the various crafts in our organization, and it would seem to me that you could easily find out that we are carrying out the letter and agreement of our contract through your organization in Portland." Mr. Ryan said, "No, I do not think that would work, because, as I said, as a matter of fact the local manufacturers here in San Francisco do not trust us any more than we could throw our hats," and he said, "It is more or less the same with us, we do not trust them any further than we can throw our hats, so that agreement would never work."

(Testimony of H. P. Smith.)

As I recall the conversation terminated about noon time. Mr. McCreedy asked Mr. Ryan if he would not go to lunch with us, and he begged to be excused, saying he had been ill for some time and was on a very strict diet. As I recall the [427] appointment was for 9:30 in the morning.

I continued my connection with Grand Rapids Company after that date. We got no more jobs in the Bay Area, except some little odds and ends, small jobs, but nothing of any importance. I spent a good portion of my time outside this particular Bay Area in other parts of the territory until 1940, when the company decided to appoint a licensee in Northern California, and I left the employment of Grand Rapids Store Equipment Company and went with Unit-Built Store Equipment Company, who were appointed licensees. I worked for Grand Rapids Company for a commission. I have worked for Unit-Built Fixture since June, 1940, whom I understand is a member of the Institute.

Cross-Examination

By Mr. Routzohn:

This conversation occurred in June or July, 1938, at the Sir Francis Drake Hotel. Mr. Williams was not present. Mr. McCreedy was present all the time during the conversation. He did not leave the room at any time so that he overheard everything that was said by Mr. Ryan that I testified to here. I don't know our wage scale in Portland in 1938, that was

(Testimony of H. P. Smith.)

not discussed at that time. It was not discussed that our wage scale was 50 cents an hour in 1936. Mr. McCreedy agreed to enter into an agreement whereby he would pay the same wage scale that prevailed in San Francisco on any equipment shipped into San Francisco. He made that proposition. I did not know there was a written agreement with the employers as far back as 1936. All that was discussed was the fact that Mr. Ryan said they had entered into an agreement or understanding. As I remember Mr. McCreedy asked him if that agreement or understanding was in writing and Mr. Ryan said, "Why, no, it was not in writing, you do not think we are crazy, do you?" [428]

Mr. Ryan did not state, "Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer and nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government or that of any interstate common carrier or any regulation of the Federal Trades Commission or of the Sherman Anti-Trust Law."

Cross-Examination

By Mr. Faulkner:

I did not say Mr. Ryan told us that in 1934 an agreement had been entered into. He didn't say anything about 1934 in that conversation. He did say that business had been very poor and had started to get better in 1934. He mentioned the year 1934, I said

(Testimony of H. P. Smith.)

approximately 1934, I don't remember whether 1933 or 1934. Mr. Ryan stated that over a period of 1932, as I remember, up to 1934, conditions in San Francisco had been quite poor and they began to pick up in 1934, and then it was he thought about negotiating for a new wage scale.

I didn't state to \$1.12½. I said, as I remember it, it was \$1.12½. My recollection as to the conversation in 1938, is that he said \$1.12½. I didn't understand when he made the demand. He didn't specify any definite date when the demand for \$1.12½ was made. I didn't know that when we were talking to Mr. Ryan in July of 1938, that was when the demand was made to get \$1.12½ an hour. He didn't tell me that.

Mr. Ryan stated that he had a number of conferences with the various manufacturers regarding the so-called new wage scale, and after a number of weeks of conferences and discussions, the local manufacturers agreed to this wage scale, provided they could have some protection from outside competition of Manufacturers operating under a lower wage scale. [429]

I came back with Grand Rapids in June of 1935. I had been with them since 1916. I did not know at the time I went to Grand Rapids in 1916 that the Unions in this vicinity would not work upon material that had been worked on outside of this community on a different wage scale than that existing here. I came to San Francisco as branch manager

(Testimony of H. P. Smith.)

for the company in 1925. I acted in that capacity until 1931. In that period I learned our fixtures were installed by Union carpenters. I never paid any attention whether the goods I was handling were union or non-union. Mechanics here in San Francisco set them up and installed them. I wouldn't term them carpenters, I would call them cabinet makers.

In the meeting with Mr. Ryan I took no notes of the conversation. I would say it lasted from two to two and one-half hours. When it was concluded Mr. McCreedy invited Mr. Ryan to lunch.

The expression, "trouble could be ironed out" was not used by Mr. McCreedy that I recall. I didn't have the conversation with Mr. Ryan, Mr. McCreedy did. It was not used by Mr. Ryan that I recall. I don't recall making the statement that the expression "trouble ironed out" was used by Mr. McCreedy or Mr. Ryan.

I am employed by Unit-Built Company, one of the defendants in the case. Mr. Roselyn is the head of that company and handled the Grand Rapids line under a license. His directions to me are to press Grand Rapids equipment in the sales.

Q. "And in connection with those sales, you are unable to compete against local commercial fixture competition in this district; isn't that true?"

"Mr. Clark: I object to that as incompetent, irrelevant and immaterial. [430]

"The Court: Sustained.

"Mr. Faulkner: Q. In connection with the

(Testimony of H. P. Smith.)

work that you do for the Unit-Bilt people you bid, do you not, upon Grand Rapids articles?

"A. We have to quote prices.

"Q. You also quote prices on the same jobs for the Unit-Bilt people, don't you?

"A. That is true.

"Q. Which is the lower?

"Mr. Clark: Your Honor, we object to that—

"The Court: I don't see the materiality of it. Objection sustained.

"Mr. Faulkner: Well, we offer to prove, your Honor, that the prices of the Unit-Bilt fixtures are constantly lower.

"Mr. Clark: Just a moment. I object to Mr. Faulkner stating what he offers to prove in the presence of the jury.

"The Court: You may proceed.

"Mr. Faulkner: We offer to prove by this testimony that the prices of the Unit-Bilt Company to the same customers where their prices are quoted and the Grand Rapids' are quoted, that the Unit-Bilt prices are constantly lower even when their instruction is to sell Grand Rapids goods.

"The Court: Let the ruling stand."

Thereupon documents marked for identification "Exhibit 35-10" and produced by the United Brotherhood under subpoena comprising correspondence between the First General Vice-President of the United Brotherhood and Mr. D. H. Ryan, with certain attachments to the letters, were introduced

in evidence as "Exhibit 35-10" and the following was read to the jury:

"Mr. Howland: If the Court please, I am not going to read all of these documents. A part of this file marked Exhibit 35-10 is an original letter on the letterhead of Millmen's Local Union No. 550 and addressed to Mr. M. A. Hutcheson, First General Vice-President, Carpenters Building, Indianapolis, Indiana, dated [431] June 1, 1939, and reads as follows:

"Dear Sir and Brother:

"In reply to yours of May 26, 1939, you will find enclosed the required agreement. We are meeting again next Monday with mill owners on a six-county setup and enclosed agreements are signed with the understanding the final setup will apply in all cases.

"An oversight in not sending them in.

Sincerely and fraternally,

W. C. O'LEARY

for D. A. RYAN

"P. S. Brother Ryan requests that I forward the agreement as per your letter to him of 5-26-39.

W. C. O'L."

"Attached to that letter are two of the contract forms heretofore introduced in evidence as being the contract of June 15, 1938. The first of these attached contracts begins as follows:

"Agreement. For the purpose of promoting the mutual interests of the parties signatory hereto, it is agreed between Commercial Fixture and Cabinet

Company and the Bay Counties District Council of Carpenters, as follows:

"The wages, hours and working conditions of the cabinet makers, carpenters and millmen employed by the James P. La Barbe (Commercial Fixture and Cabinet Company) will be as stipulated in the agreement between the District Council of Carpenters, Millmen's Unions Nos. 42 and 550, and the Lumber Products Association, Inc., and the Cabinet Manufacturers Institute, Inc., Northern Division, which is as follows: —then this document cites in full the contract between the labor organization and the Cabinet Manufacturers Institute, which is already in evidence.

"I invite the attention of the Court and the jury to the fact that paragraph 2 of this quoted agreement has been exed out in [432] pen and ink and in the margin appears the word "Out".

"The Court: You referred to that heretofore, did you not?

"Mr. Howland: Yes.

"Mr. Tuttle: It shows up in another duplicate now with the paragraph 2, which was the arbitration award phase, as exed out.

"The Court: Yes.

"Mr. Howland: This agreement at its conclusion is signed in pen and ink, "Commercial Fiktur and Cabinet Company, James P. LaBarbe," and it is dated 5-19-39.

"I also invite the attention of the Court and the jury to the fact that paragraphs Nos. 17 and 18 in

this paper are unimpaired by any defacement whatsoever and are not marked out as is paragraph 2. I will also say that paragraphs 17 and 18 are identical with the paragraphs as appear in the contracts heretofore introduced and simply contain that clause which we have read before that it is agreed that no materials will be purchased from and no work will be done on any materials, and so forth.

“Also attached to this same letter is a similar document; the only difference in it is that at the top it says between the labor organization and the Hager Sash and Door Company, Berkeley, California, and on this document likewise paragraph 2 has been exed out in pen and ink with the word “Out” written in the margin, but paragraphs 17 and 18 are unimpaired. This is signed by E. William Burgett as representing Hager Sash and Door Company, signed in pen and ink, and also signed in pen and ink by D. H. Ryan by W. C. O’Leary, and it is dated 5-16-39.

“Attached to this file by way of reply to this letter of Mr. O’Leary is a carbon copy of a letter addressed to Mr. O’Leary dated June 5, 1939, which reads as follows:

“ ‘June 5, 1939.

“ ‘Mr. W. C. O’Leary, B. A.,
Local Union No. 550,
640 6th St.,
Oakland, Calif. [433]

“ ‘Dear Sir and Brother:—

“ ‘Yours of June 1st enclosing copy of agreements entered into with the:—

"Commercial Fixture & Cabinet Co., Oakland, Calif.

Hager Sash & Door Co., Berkeley, Calif.

has been received at this office, and their applications for the use of our label are now acceptable.

"Stamps for their products have been ordered made up. As soon as completed they will be shipped to you.

Yours fraternally,

~~—~~ FIRST GENERAL VICE
PRESIDENT.' "

"And also in the file is a carbon copy of a letter dated June 7, 1939, addressed to Mr. O'Leary, which reads as follows:

"June 7, 1939.

"Mr. W. C. O'Leary, B. A.,
Local Union No. 550,
640 60th St.,
Oakland, Calif.

"Dear Sir and Brother:—

"As per my letter of June 5th I have made up and forwarded to your address Two (2) rubber stamps of our Label for use upon the products of the concerns you recently made application for. These Stamps are to be placed as follows, as that is the way they have been registered at this office:—

Stamp No. 191—Commercial Fixture & Cabinet Co. Oakland.

Stamp No. 192—Hager Sash & Door Co., Berkeley, Calif. *

"If at any time in the future any firm in your

district using our label on their products should suspend business or be deprived of the use of our label for any reason be sure to notify this office immediately.

"Copies of all future agreements entered into with the above mentioned firms must be sent this office immediately after being signed up.

Yours fraternally, [434]

"FIRST GENERAL VICE
PRESIDENT."

"Mr. Tuttle: Your Honor please, before leaving the correspondence with the United Brotherhood, there are one or two things in that file I would like to put in evidence and perhaps while everybody's memory is fresh about it, it would be a suitable time for me to do so now.

"The Court: If you wish to do so, you may.

"Mr. Howland: The only part of that which I offered in evidence are the documents marked 35-10.

"Mr. Tuttle: Well, I am taking 35-10.

"In the first place, your Honor, when Mr. Howland called attention to the enclosed agreement and paragraph 2 exed out and the word "Out" he then summarized as to paragraph 17, the first sentence, and I wish to call your Honor's attention and the jury's attention on the record to the fact that that paragraph 17 also contains these words—

"The Court Read the entire paragraph.

"Mr. Tuttle: 'In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done

on any material or article that has had any operation performed on same by Saw Mills, Mill or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement. The purchase, working and sales of the following products is excepted:—then follows a list which has been read a number of times. Then follows these two sentences: ‘Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.’” [435]

“Now, attached to the letter of Mr. Ryan to Mr. M. A. Hutcheson dated June 1, 1939, which was read, is a printed form, your Honor, entitled ‘Application for the Union Label,’ and inasmuch as this correspondence and other correspondence from this same, or associated file, constantly refers to the receipt by the head office in Indianapolis of an application from the mill owner for the union label, I would like to put in just as to the stamp and this one-printed form because it is referred to in the letter which Mr. Howland read to the jury.

“Mr. Howland: The whole file is in evidence.

“Mr. Tuttle: Then I would like to read this formal application to the jury. This, as your Honor and ladies and gentlemen of the jury, you will see, is a pink form. It is entitled “Application for the

Union Label." Then these are the printed questions with blanks after them for the answer:

"What is the name of the firm upon whose products this label is to be used?" Then a line for the address, street or post office box number, the town and state.

"What do they manufacture?"

"How many men do they employ?"

"How many journeymen of the Brotherhood do they employ?"

"How many apprentices of the Brotherhood do they employ?"

"Do they employ any women? If so, how many? Do they employ any children? If so, how many? If the above firm employs women or children, state fully what they do.

"What is the maximum hours per day worked?"

"What is the maximum hours per week worked?"

"What is the minimum rate of wages per hour?"

"Are any of their products shipped? If so, to what sections are they shipped?"

"Then there is a place for the signature of the secretary and the president of the party making the application." [436]

Thereupon Minutes of Millmen's Local Union No. 262, Exhibit No. 118-12 for identification were introduced as "U. S. Exhibit No. 118-12" and the following read:

"Mr. Howland: From the minutes of the meeting of Millmen's Union No. 262 of November 7, 1938, the following appears:

• Brother Cambiano U B organizer reports on conditions of the new agreements, also that there would be a meeting of the millmen Tuesday, November 8 and a meeting of the mill owners Wednesday, November 9 in San Francisco, asking that a committee of three be appointed to meet with them. Moved, seconded and carried that a committee of three be appointed to meet with the Conference Committee in San Francisco, including the Pres. Committee brothers Smoot, Cloud and Barnes.'

“From the minutes of the meeting of October 24, 1938:

‘Brother J. Cambiano U B organizer gave an explanation of the new mill agreement. Agent Blanchfield read the new agreement as submitted to the mill owners. Moved, seconded and carried that the new agreement be adopted as read.’

“Minutes of the meeting of October 3, 1938:

‘Organizer Cambiano reports on the mill situation.’

“From the minutes of the meeting of September 26, 1938:

‘The committee to the conference meeting reported on the meeting. Brother Cambiano general organizer reports on the mill situation in San Francisco. Moved, seconded and carried that the Pres. be empowered to go at any time to meetings with his committee at the expense of the union.’

“From the minutes of the meeting of February 6, 1939:

‘Brother Cambiano present and reports on the mill situation and asks that a committee be appoint-

ed to meet in San Francisco with the mill owners. Committee brothers Bergstrom, Graff, Wal Wilzack and Smoot.'

Thereupon minutes of Joint Millmen's Committee of [437] Locals 42, 262, 550 and 1956, being Exhibit 124 for identification, were introduced in evidence as follows:

"Mr. Howland: From the exhibit marked for identification 124-28, the minutes of the meeting of April 8, 1939, the following appears:

'Joint Millmen's Committee of Locals 42, 262, 550, and 1956, convened at 12:00 noon, Chairman Harvey Miller presiding.

'Brother Smoot: Get the \$8.50 now. Then get unified in our efforts and go for a \$9 agreement over a period of two years beginning in 1940. Go out and get the carpenters' support. A 75-cent-an-hour door shipped in here with the label is the same as a 75-cent union man working and making it in this district.

"(The minutes were marked "U. S. Exhibit 124-28" in evidence.)

"Mr. Howland: And from the exhibit marked 124-42, Minutes of the meeting of the Conference Committee of the same unions dated November 26, 1938, the following appears:

'Moved by Brother Irish and seconded by Westby that Brother Ryan be requested to call a meeting of representatives of employers and their associations in the Bay Counties district for the purpose of getting a uniform agreement signed as soon as possible. (Carried.)'

“(The minutes were marked “U. S. Exhibit 124-42” in evidence.)

“Mr. Howland: And from the exhibit marked 124-41, minutes of the meeting of December 3, 1938, the following appears:

:Brother Ryan told of calling a meeting of Joint Conference Committee. San Mateo was represented by Mr. McMeown, San Francisco by Mr. Ennes, Gaetjen, and Warden, Mr. D. N. Edwards, of Alameda County. If the scope was six counties they would be bound to arbitrate, if not six counties the arbitration clause would not be binding.

•Ennes insists paragraph No. 2 go in. [438]

•Ryan reported Brother Cambiano phoned some orders from General President Hutcheson to the effect that the San Francisco agreement must not contain quotations from the Arbitration Board and paragraph No. 2 must be eliminated.

“(The minutes were marked “U. S. Exhibit 124-41,” in evidence.)

“Mr. Howland: From the minutes of the same Conference Committee marked 124-47, the meeting of October 15, 1938, the following appears:

•Brother Wilcox told of the check-up made on the compromise offer of \$8.50. Stated Brothers Cambiano, Kelly, O'Leary and himself visited, first; D. N. Edwards of the East Bay Mill Owners. O. K. on \$8.50 and six counties. Tried to include 2-3 and 4 panel, slab and hollow cored doors. No consideration on added doors. Second, picked up Jack Peirson, of Redwood Manufacturers Co., Pittsburg, at Hotel

Oakland—O. K. on \$8.50 and six counties but will have to get approval of Casper Wood. Third, to San Jose, picked up Secretary and Business Agent Blanchfield, of Santa Clara County District Council, and proceeded to the P. M. Co. and met the manager, Mr. Pierce. Six county set-up at \$8.50 O. K. Will sign up in the morning and manufacture everything. Then to San Francisco that same evening and met Harry Gaetjen, of San Francisco Mill Owners, and Mr. Ennes, of Cabinet Manufacturers' Association, Northern Division, O. K. on \$8.50 for six counties, men now getting \$9.00.

'We should strive to have S 4 S. and everything made here. Protect the mill owners and go for the other 50 cents.'

"(The minutes were marked "U. S. Exhibit 124-47" in evidence.)"

Thereupon original copies of August 10, 1939 contract was substituted for photostat, marked Exhibit No. 69 for identification and was introduced in evidence as "U. S. Exhibit No. 69."

Thereupon, identical contract except that Lumber [439] Products Association, Inc. by H. W. Gaetjen is the signatory instead of Cabinet Manufacturers, was introduced in evidence as "U. S. Exhibit No. 172."

Thereupon the 1939 contract was read to the jury by Mr. Faulkner as follows:

**EMPLOYER-EMPLOYEE AGREEMENT
WAGES, HOURS, AND WORKING
CONDITIONS**

RE: MILL AND CABINET WORK.

1. This Agreement is a negotiated Agreement entered into in good faith by all parties who are signatories hereto and who stipulate that they have full authority to bind their organizations to the terms hereof.
2. During the terms of this Agreement the minimum wage scale of Journeymen Cabinet Makers, Bench Hand and Millmen employed on bench work and the operation of wood working machinery will be One Dollar (\$1.06-1/4) Six and One Quarter Cents per hour, except in the manufacture of stock sash and doors, in the manufacturing of which the minimum wage scale of Ninety-six and One Quarter (\$.96-1/4) Cents per hour will apply.
3. Eight (8) hours shall constitute a regular work day. The regular work day shall be between 8:00 a. m. and 5:00 p.m., five (5) days shall constitute a regular work week from Monday to Friday inclusive.
4. The rate of wage for overtime work shall be as follows: For the first four (4) hours after the first eight (8) hours time and one-half. All overtime thereafter at double time. Work on Saturdays, Sundays, and Holidays herein enumerated from twelve (12) midnight of the preceding day at double time.
5. Recognized holidays are New Years' Day,

Decoration Day, Fourth of July, Labor Day, Admission Day, Thanksgiving Day and Christmas.

'6. When two (2) shifts are worked in any twenty-four (24) hour period, straight time shall be paid. When three (3) shifts [440] are worked, eight (8) hours shall be paid for seven (7) hours work.

'7. There shall be no limitation of the Employer as to whom he shall employ or discharge, excepting that any working Foreman, working Superintendent, Journeyman Millman or Cabinet Maker employed, shall either be a member or shall within thirty (30) days after his employment become a member of the Millmen's or Carpenters' Union. Any apprentice employed shall either be a member or within two (2) months after his employment become a member of either of said Unions.

'8. An apprentice shall not be less than eighteen (18) years of age and not over twenty-two (22) years of age when starting his apprenticeship. He shall undergo a course of shop training for four (4) years and shall attend such Trade School as is jointly approved by the Trade Association and Union Signatories having local jurisdiction.

'9. An apprentice who has failed to establish an accumulative attendance of eighty (80%) per cent. shall not at the option of the employer be entitled to the schedule rate until such deficiency in attendance has been remedied.

'10. The apprentice shall be given two (2) examinations per year by a joint examining board

composed of equal representation from the Union and the Trade Association Signatories hereto.

'11. The employment of apprentices shall not exceed one (1) apprentice to every four (4) or major fraction thereof—Journeymen, Millmen, and Cabinet Makers combined. Handicapped workers shall not be included in this computation.

'12. It shall not be a contractual obligation, but it shall be the policy of employers, parties to this Agreement, to employ apprentices who might have been laid off due to lack of work before employing new apprentices.

'13. Effective August 1, 1939, the minimum rate of wage [441] shall be the percentages of the Journeymen's minimum rate of wage as follows:

1st year—

1st 3 months 30%—\$2.55

2nd 3 months 35%— 2.97

3rd 3 months 40%— 3.40

4th 3 months 45%— 3.82

2nd year—

1st 6 months 50%— 4.25

2nd 6 months 60%— 5.10

3rd year—

1st 6 months 65%— 5.52

2nd 6 months 70%— 5.95

4th year—

1st 6 months 80%— 6.80

2nd 6 months 90%— 7.65

'14. A person who is incapacitated by age, physical or mental handicaps or other infirmities, may

be employed at an hourly rate of wage below the minimum established in this agreement, provided he shall first have obtained a written dispensation from his Union.

'15. A person having temporary disabilities may be employed at an hourly rate of wage below the minimum established by this Agreement, provided he shall first have obtained a written dispensation from his Union.

'16. Millwright work consisting of installing equipment and maintenance of equipment, may be done at the convenience of the Employer. The rate of wage for such work shall be the regular rate of wage of Journeymen, Millmen employed on production work, except that the rate of wage shall be straight time without regard to period or length of time employed on such millwright work, or the day. This paragraph is not applicable to grinding, changing knives, saw filing or setting up of machine tools.

'17. The Shop Steward shall make himself known to the Employer.

'18. The following rules (Paragraphs Nos. 19, 20 and 21) of the U. B. of C. and J. of American locals are hereby specifically recognized.

'19. No member of the U. B. of C. and J. of America locals shall work in any cabinet shop, planing mill or elsewhere; in the City and County of San Francisco, or in the counties of Alameda, Contra Costa, Marin, San Mateo, or Santa Clara, in the capacity of a millman or cabinet maker, unless the planing mill or cabinet shop in which he is working is entitled to use the Union Label.'

Can we agree what that "U. B. of C. and J." means so that it will be intelligible to the Jury?

"Mr. Howland: United Brotherhood of Carpenters and Joiners of America.

"Mr. Faulkner: Then so that this will be intelligible these initials, "U. B. of C. and J." means United Brotherhood of Carpenters and Joiners of America.

'20. No member of the U. B. of C. & J. of America Millmen's locals shall work in any cabinet shop or mill in the six counties herein mentioned where more than one employer, i.e., one having a direct interest in the business, excepting employers members of the U. B. of C. & J. of America who work with the tools of the trade. When an employer (non-member of the U. B. of C. & J. of America) works with the tools of the trade his work shall be limited to the regular working day of eight (8) hours which shall be between 8:00 a.m., and 5:00 p.m. For each union member of the firm that works overtime, or on holidays, there shall work during the same period one (1) union employee not a member of the firm.

'21. When any cabinet maker, bench hand or millman performs work at the building site, the minimum scale of wages and other conditions shall conform to the carpenters' scale of wages and other conditions as established by a collective bargaining agreement between a recognized Employers' organization and the United Brotherhood of Carpenters and Joiners of America. Under any circumstances, the minimum scale paid for [443] such outside work shall not be less than the minimum shop scale.

'22. Business agents of the Millmen's Union shall have access to all shops during working hours at their own risk.

'23. It is hereby agreed and understood that in granting the use of the Label of the United Brotherhood of Carpenters and Joiners of America under this Agreement that the Label shall remain at all times the property of the U. B. of C. and J. of America, and may be recalled at any time when it is being used to the disadvantage of the Organization (U. B. of C. & J. of A.). The recall of the Label shall be prima-facie evidence of the cancellation of this Agreement with respect to the Shop from which the Label is withdrawn.

'24. During the term of this Agreement there shall be a Six County Joint Advisory Committee composed of equal voting representatives from Employers and organized Employees from the counties of San Francisco, Alameda, Santa Clara, San Mateo, Marin, and Contra Costa and an International Officer representing the United Brotherhood of Carpenters and Joiners of America.

'25. The Advisory Committee shall elect a Chairman, Vice-Chairman and Secretary from the committee and said *offers* shall be entitled to voice and vote.

'26. There shall be no limitation as to the number of Conferees provided they are parties to a Millmen's Collective Bargaining Agreement and operating mill or cabinet shop within the six (6) counties herein mentioned.

'27. The number of votes shall be limited to sixteen, equally divided between the Employer and Employee representatives.

'28. A quorum for business shall consist of there being present in person, Employer and Employee representatives from five (5) counties. The employer and employees representatives need not be from the same five counties.

'29. Conclusion of the Advisory Committee when effecting [444] changes in the Contract shall be unanimous; to become effective for such unanimous decision, Employer and Employee representatives shall be present from the six counties.

'30. The advisory Committee shall lend its good offices to adjust disputes and grievances that may arise and may interpret and make such rules and regulations as may be necessary to give force and effect to the intent, purpose and meaning of the agreement. They shall be empowered to have access to all records pertaining to any case when a violation of this Agreement is involved.

'31. The Chairman at the request of any member of the Advisory Committee and at such reasonable time as is set by that member shall call a meeting of the Committee.

'32. The respective Employers and Employees of the six (6) counties shall each designate a local Employer and Employee Joint Committee. The Local Employer and Employee Joint Committee shall function in matters of local interest.

'33. The Union shall advise the Local Employer

and Employee Joint Committee of all Union stamps or labels it proposes to issue prior to issuing same.

'34. This Agreement shall remain in effect for a period from May 1, 1939, to May 1, 1940, and shall continue to remain in full force and effect thereafter provided it shall be subject to change, modification or termination after May 1st of any year by either Party (employer or employee) upon notice being served in writing by either Party upon the other Party between the period of January 1st and February 1st of any year.

'35. In the event of either Party having exercised its rights under paragraph 34 by having served notice of desire to change or modify contract and such changes or modifications not having been mutually agreed upon on or before March 16th, then at the request of either Party, an Arbitration Board shall be selected and unsettled matters shall be submitted to the Board. [445] The award of the Arbitration Board shall be final and binding upon all Parties to Labor Agreements with respect to Mill and Cabinet Maker Members of the American Federation of Labor in the Counties of—San Francisco, Alameda, Contra Costa, Marin, San Mateo, and Santa Clara.

'36. It shall be the function of the Joint Advisory Committee to select the Arbitration Board. The Arbitration Board shall be composed of five (5) members; a neutral arbitrator; an arbitrator representing the employers; an arbitrator representing the employees; a technical advisor representing the employers; and a technical advisor representing the employees.

'37. The award of the Arbitration Board shall be arrived at by a majority vote. The technical advisors shall have no vote. In the selecting of the neutral arbitrator who shall be the chairman, a caucus of the employers representatives and employees respectively on the Joint Advisory Board shall present lists of five (5) names. When the same name appears upon any of the lists submitted by the employers and any of the lists submitted by the employees that Party shall be the neutral arbitrator upon his acceptance of the office.

'38. In the event of failure of acceptance of office, the process shall be continued until the office is filled.

'39. There shall be no restriction placed upon either party by the other in the selection of their own Members of the Board.

'40. The fees and expenses of the neutral arbitrator shall be borne one-half by the employers, and one-half by the employees.

'41. Subject matter presented to the Arbitration Board shall be in the form of written briefs; oral argument may be presented to the Board upon the Board's request. Written briefs may be presented by, or oral argument requested of, any employer or employee, or their respective representatives provided they are [446] parties to a mill or cabinet shop collective bargaining agreement in the six (6) counties herein mentioned.

'42. In entering into a six (6) county Arbitration Agreement it is recognized that the Redwood

Manufacturers Company have justifiably included in their present Agreement dated November 1, 1938, a clause which runs as follows:

'43. "It is understood between the Company and the Union that this section is being included with the complete understanding that in this, and further agreements, wage rates of the Redwood Manufacturers Company must be competitive with competing manufacturers whose plants are located outside the six (6) counties involved in this Agreement. In general, such competition is as listed in Section No. 20."

'44. The signature of the International Officer of the United Brotherhood of Carpenters and Joiners of America affixed hereto signify the approval of this contract by the International and further binds the International to approve only such mill and cabinet employer and employee Agreements entered into in the six (6) counties herein mentioned as are uniform with respect to rates of wages, hours, and working conditions throughout the six (6) counties.

UNITED BROTHERHOOD OF
CARPENTERS AND JOIN-
ERS OF AMERICA MILL-
MEN'S UNION No. 550

C. H. IRISH

W. C. O'LEARY

Witnessed by

J. F. CAMBIANO.

J. F. Cambiano—Gen'l. Rep-
resentative, witness

UNITED BROTHERHOOD OF
CARPENTERS AND JOIN-
ERS OF AMERICA MILL-
MEN'S UNION No. 42

CHAS. HELBING

R. H. MILLER

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN

D. H. Ryan,

Secretary-Treasurer

COMMERCIAL FIXTURE &
STORE FRONT INST.

J. E. ENNES, Mgr.

“ ‘Dated: Aug. 10, 1939, San Francisco, Califor-
nia.’ ” [447]

“Mr. Faulkner: I will stipulate, Mr. Howland,
that Exhibit 172, the agreement, is identical with the
one just read except that the counterpart is signed
by the Lumber Products Association.

“Mr. Howland: It is signed by the Lumber Prod-
ucts Association, Inc., H. W. Gaetjen, and the sig-
natory parties on behalf of Local Union 42 include
an additional name, that is W. L. Wilcox. Other-
wise they are the same.”

* * *

“Mr. Tuttle: May I inquire through you whether
I have Mr. Howland's stipulation that from the time
when these contracts came into being in 1939, and
the contracts forwarded to the Indianapolis office,

to Mr. M. A. Hutcheson, First Vice-President, in connection with the application for labels, they were in the form just read to the jury, that is here in the files. I do not want to put in all of the files.

"Mr. Howland: Yes, I have been through these files and I find the records reflect that is the case."

Thereupon By-Laws and Trade Rules of Local 42, Exhibit No. 1 for identification, was introduced in evidence in its entirety as "U. S. Exhibit No. 1".

"I will not read them at this time, other than the concluding section, Section 43, which reads as follows:

"All cases not governed by these By-Laws will be governed by the Constitution and Laws of the U. B. of C. J. of A., and by-laws and Trade Rules of the Bay Counties District Council of Carpenters.'"

Thereupon Exhibit 61-44. for identification, from files of Mangrum, Holbrook & Elkus, was introduced in evidence and was read as follows:

"Mr. Howland: This letter marked Exhibit 61-44 is on the letterhead of Bay Counties District Council of Carpenters and dated January 31, 1940, addressed to Mangrum, Holbrook & Elkus; [448] the text of this letter and the signature is mimeographed, the address being typewritten onto it, and the text of the letter is as follows:

"Our present agreement with you covering hours, wages and working conditions of the cabinet makers and millmen in your employ stipulates (see paragraph thirty-four) that either party to the agree-

ment may, by serving notice in writing upon the other party, enter into discussions regarding any proposed changes *that* or modifications in the agreement to be effective May 1, 1940. This is to officially notify you that the Bay Counties District Council of Carpenters and the Millmen's Unions affiliated therewith desire to discuss with you or your representatives, and if possible negotiate, certain changes in our agreement.

"We would appreciate it if you would notify us what time and place would be convenient to you to meet with our representatives to discuss this matter.

"With best wishes, we remain,

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS,

D. H. RYAN,

Secretary.'"

The letter contains a pencil notation: "Gene will ring Innes on this and let me know what he says", initialed R.J.E. (Richard Elkus). Pencil mark reads over to another pencil notation, "Nothing to do, routine notice."

Thereupon Exhibit 61-48, for identification, was introduced in evidence, being letter on letterhead of Bay Counties District Council of Carpenters, dated April 11, 1938, addressed to J. C. Ennes, Secretary-Cabinet Manufacturers Institute of California, Northern Division, Mr. F. S. Spencer, Chairman.

- Lumber Products Association of San Francisco, Mr. D. N. Edwards, Chairman, East Bay Mill Owners Association, reading as follows: [449]

“The agreement now in effect between your three associations and the Bay Counties District Council of Carpenters Millmen’s Local Union 42 of San Francisco and Millmen’s Local Union 550 of Alameda County, stipulates (paragraph 24) ‘it shall be subject to change, modification, or termination by either party (after June 15, 1938). upon 60 days notice being served in writing upon the other party.’”

“In accordance with the provision we have quoted, you are hereby officially notified that the Bay Counties District Council of Carpenters, acting both for the District Council of Carpenters and for Millmen’s Unions 42 and 550, all signatories to the agreement, that it is our desire and request that certain changes be made in our agreement.

“We are making our request at this time so that we may have ample time to arrive at a mutually satisfactory adjustment of the present agreement before June 15, 1938.

“May we respectfully suggest, in order to promote the establishment of conditions of employment in Santa Clara County and Contra Costa County identical to the conditions that may be established in the San Francisco Bay Counties, that you invite representatives of the employers in these two adjacent counties to participate in the conferences in the establishment of our new agreements. We

are referring specifically to the Pacific Manufacturing Company of Santa Clara County and the Redwood Manufacturers Company of Pittsburg.

"We ask that our representatives be afforded an opportunity to meet with representatives of your organizations at your earliest convenience.

Sincerely yours,

**BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS**

D. H. RYAN,

Secretary." [450]

Thereupon "U. S. Exhibits Nos. 173 and 174" were introduced in evidence with the stipulation that Mr. Ryan, Secretary of Bay Counties District Council of Carpenters signed them and that they were circulars.

"Mr. Howland: The letter marked Exhibit 173 contains a mimeographed text on the letterhead of the Bay Counties District Council of Carpenters dated October 16, 1937, and it is addressed:

'To the Planing Mill Owners
and Cabinet Manufacturers
in the Bay Area.

'Greeting:

'The Employer-Employees Labor Conference Committee, at its last meeting, defined the meaning and intent of the terms "Flooring", also 'T & G' in Paragraph 16 of the Agreement of September 21, 1936, as follows:

'By Unanimous vote, 'Flooring' was defined as:
1" x 3", 1" x 4", 1" x 6", 1 1/4" x 4".

'T & G' was defined as of the following materials and dimensions:

Fir—

T & G V, also

T & G V and C B

Redwood—

T & G V 1 S, also

T & G Bead 1 S

$\frac{3}{8}$ " x 4" & 6"

$\frac{5}{8}$ " x 4" & 6"

$\frac{3}{4}$ " x 4" & 6"

'We take this opportunity to thank you for your cooperation in the past and are confident we can depend upon your cooperation in the definitions above referred to.'

BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS

D. H. RYAN,
Secretary".

"Mr. Howland: The other one is also a mimeographed letter on the letterhead of the Bay Counties District Council of [451] Carpenters dated June 21, 1937. It is addressed to:

"To All Planing Mills
and Lumber Dealers in
Alameda County.

'Gentlemen:

'This letter is being addressed to the planing mills and lumber dealers in Alameda County, for the reason that there is being brought into Alameda County

doors, sash and trim that should be made in the San Francisco Bay District, in accordance with the terms of our existing agreement with the East Bay Planing mill owners and other firms in Alameda County.

“This letter is to officially notify you that on and after July 1, 1937, the terms and stipulations of our agreement will be strictly adhered to and enforced in Alameda County.

“Assuring you that we will greatly appreciate your cooperation, we remain

Sincerely yours,

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary.”

Thereupon document was introduced and marked “U. S. Exhibit No. 83”, being copy of the 1939 contract referred to in the testimony of Mr. Miller, who produced documents in behalf of Mullen Manufacturing Company.

Thereupon portion of Exhibit 63-8 was introduced as follows:

“Mr. Howland: This document is marked Exhibit 63-8, and is the minutes of the San Francisco Building and Construction Trades Council, the meeting of September 16, 1939, under the heading Unfinished Business, and the following notation appears:”

“Motion carried that the Nicolai Sash and Door Company be placed on the “We don’t patronize list,”

the words "We don't patronize" being in a quotation mark." [452]

Thereupon documents from Exhibit 11, for identification being correspondence produced by Local Union #42, were introduced in evidence as Exhibits Nos. 11-1, 11-3 and 11-4, and read as follows:

"Mr. Howland: The letter marked 11-1 reads as follows:

'12/13/38.

'Cabinet Manufacturers Institute of California Inc.
Lumber Products Association Inc.

San Francisco, California

December 12, 1938

'Millmen's Union #42, United Brotherhood
of Carpenters and Joiners of America.

Building Trades Council, 200

Guerrero Street

San Francisco, California.

'Gentlemen:—

'We have repeatedly asked for your cooperation in the matter of your having a sufficiency of Business Agents. To date we have seen no effective work on this matter. The millmen's product is on practically every job that employs a carpenter. When may we expect your cooperation.

Yours very truly,

CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA INC.

By J. G. ENNES

Manager

LUMBER PRODUCTS ASSO-
CIATION INC.

By H. W. GAETJEN,
Secretary.' "

"Exhibit 11-4 is 'Report of Committee on Business Agents.' This is from the files of Local Union No. 42, dated January 31, 1939. It reads as follows:

" 'Local Union No. 42, having elected an additional Business Agent for the purpose of recapturing the work that has been going out of this territory and to non-union plants, the committee reports as follows: [453]

" 'We recommend that the additional Business Agent make it his principal work to contact Owners, Home Builders, Contractors, Architects, Merchants and Awarding Authorities of the City, County and State Governments to have their work done in Local Plants, hiring members of this Local Union.

" 'He should keep in constant touch with the Employer Associations and the individual Employers and obtain their cooperation for the same purpose.

" 'He should keep a constant check on all Retail Lumber Yards and Wrecking and second-hand yards to see that the millwork and cabinets they sell are of local Union made production, and all related activities.

" 'The other Business Agent should make it his principal business to take care of all the detail work concerning the members of this Local Union. Visit

the shops and check the working cards and working conditions and adjust members' complaints. This to include San Mateo County. He shall appoint stewards where necessary and see that all stewards perform their duty. He should check on all stamps and see that it is applied to all Union manufactured material. He should keep an accurate check on apprentices, their wage scale and school attendance and visit the apprentice school at least once a week and cooperate with the teachers of the school.

"He should not collect any dues from members until the assessment has been completed.

"He should also check on the shops of the Retail Furniture Houses.

"These recommendations are tentative and will be subject to revision in the light of experience.

"In order that the work of the Business Agents may be analyzed and properly apportioned and complete records kept, we recommend that each Business Agent make a daily report on the [454] forms to be provided and filed with the Recording Secretary. These reports to be available to the Committee for analysis and report on any necessary changes in these recommendations.

H. W. LINDLEY

D. J. EDWARDS

ALEXANDER WEISS

W. P. KELLY

HARVEY MILLER'

"There is a pencil notation around that last para-

graph concerning the reports which says: 'This section was never complied with.'

"Mr. Routzohn: I don't know whose handwriting that is.

"Mr. Howland: There is no indication of whose notation it is.

"This Exhibit No. 11-4 contains a further pencil notation at the top reading, "Read and Concur. Rec of Comm 1/31/39,' the day following the date of the letter.

"Exhibit 11-3 is a handwritten communication that says "Business Agent Committee Report. June 6, 1939.

"Your Committee recommends that on July 1st, 1939, Local Union #42 discontinue having an extra Business Agent and from that date only one Business Agent be employed.

Committee,

D. J. EDWARDS,

ALEX WEISS

H. W. LINDLEY

W. P. KELLY

R. H. MILLER.'

"At the top in pencil, "N. B. Concurred." "

Thereupon "U. S. Exhibit No. 11-8" from the file of correspondence produced by Local Union No. 42, over the objection that it was immaterial, irrelevant, incompetent and hearsay as to the defendants, and was introduced and read as follows: [455]

"Mr. Howland: It is on the letterhead of the Jones Hardwood Company, 1401 Potrero Avenue, San Francisco, California, dated December 28, 1938, addressed to:

Secretary,
Carpenter's Union
200 Guerrero St.,
San Francisco, Calif.

'Dear Sir:—

'On a number of instances, where we have had orders for doors manufactured by the Roddis Lumber and Veneer Co., Marshfield, Wisconsin, it has not been possible for us to complete delivery due to some restriction that your Union has made or imposed.

'Will you please advise us if this policy is still in effect.

'Also, it has been a practice to bring Ponderosa Pine into this market in some grades, run to certain patterns. Several months ago we unloaded a car of this material and were paid a visit by one of your delegates, who advised our foreman that this material constituted 'hot cargo' and that our men could not handle it.

'Will you please also advise us if this policy is still in force?

Yours truly,

JONES HARDWOOD
COMPANY
NELSON E. JONES,
Manager.' "

Thereupon document was introduced in evidence as defendant's "Exhibit G", and read as follows:

"Mr. Tuttle: Yes, it is very short. It is on the

letterhead of the United Brotherhood of Carpenters and Joiners of America, dated April 7, addressed to:
'Mr. D. H. Ryan, Secy.,
Bay-Counties District Council,
200 Guerrero St.,
San Francisco, Calif.

'Dear Sir and Brother:— [456]

"We are in receipt of a letter from Local Union No. 1689 of Tacoma, Washington, asking us to communicate with your Council and advise that their members are working for the Tacoma Millwork & Supply Co. under agreement and have the use of our label for their products, therefore, any material coming into your community from this firm bearing our label would be manufactured under consideration satisfactory to our organization.

"Yours fraternally,

M. A. HUTCHESON,

First General Vice President."

Thereupon the following from the constitution of the United Brotherhood was introduced in evidence and read as follows:

"The only other thing I have to read is this, after Court adjourned I noticed that in reading from the Constitution of the United Brotherhood I had failed to read two paragraphs which are marked, they are very brief, and if I may read them now I will. One is under the heading of "Label", Section 60, subparagraph (d):

"No agreement shall be made or renewed with

any firm granting the use of the label after April 1, 1916, unless all shops and mills of the firm have an eight-hour working day and employ only members of the United Brotherhood, except where dispensation has been granted by the General President upon application from the District Council or Local Union.'

"Now, some of the correspondence, your Honor, makes reference to the General Executive Board of the United Brotherhood, and that membership is dealt with in Section 15. I just want to read two sub-paragraphs. I will say that the Executive Board consists of a number of members, seven of whom are elected from different divisions of the jurisdiction of the Brotherhood of America, and then the General Executive Officers ex-officio, and [457] the two paragraphs I want to read are these, sub-paragraphs (f) of the General Executive Board shall "protect the property and interest of the United Brotherhood in such a manner as they may deem helpful and beneficial, so long as it is not inconsistent, and is within the meaning of this section.'

"Then paragraph D: 'The general executive board shall decide points of law, all grievances and appeals submitted to them in legal form and their decision shall be binding until reversed by the convention.'

And Sub-paragraph E: 'The general executive board shall have power to authorize strikes in conformity with the constitution and laws of the United

Brotherhood, and when necessary to defend the organization in any locality against the attacks of employers, combinations or lockouts, or any attempt to disrupt or destroy the organization, to support such locality by levying a per capita assessment and by ordering a cessation of work for any employer involved, irrespective of where such work is located; enter into agreement with other organizations with reference to jurisdiction over work; or a general offensive or defensive alliance.'

"Now, your Honor, there are provisions in here which I won't read, because they are rather extensive, and I am sure counsel for the Government will not object to this statement, that the general convention of the Brotherhood, which is the supreme authority of the Brotherhood, meets every four years, and it is composed of delegates from all over the United States representing local councils.'" [458]

Thereupon, Exhibit 115-57 for identification, was read to the jury as follows:

"I will now read the reply, (to Exhibit 115-57) dated August 30, 1938, addressed to Mr. M. A. Hutcheson, First Vice-President, from Mr. Ryan, which reads as follows:

"Dear Sir & Brother:

"Replying to your letter of recent date relative to our agreement with the shops and mills in this district, we are enclosing herewith copy of our agreement, the wages, hours and working conditions being set by arbitration.

"As you will see, this agreement is signed by

the Cabinet Manufacturers Institute of California, Northern Division and by the Lumber Products Association of San Francisco, representing all of the Cabinet shops in San Francisco and practically all of the planing mills in San Francisco.

“A number of shops and mills in Alameda County and other parts of the district have signed individual agreements identical with the one enclosed.

“We have agreed with the employers signatory to this agreement, that we will remove the Union Label and our men from any shop or mill in this District that does not comply with the terms of the enclosed agreement on or before September 30th, 1938.

“Trusting that this arrangement is satisfactory to the general office, and we assure you that we will permit no stamp in any shop or mill in this district, all of whom are operating under Union conditions now, unless they continue those conditions and pay the increase scale by the date stipulated.

Fraternally yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary.”

Thereupon, Exhibit 123-8 for identification, being contract between defendant Redwood Manufacturers Company and the defendant [459] United Brotherhood of Carpenters and Joiners of America, Millmen's Union 1956, dated November 1, 1938, was

introduced in evidence, and portions read as follows:

“ * * * it is somewhat different as to form; some provisions are the same and it is entitled ‘Employer-Employee Agreement upon Wages, Hours and Working Conditions,’ and section 1 is general, section 2 relates to wages, section 3 relates to the hours of work, section 4 to overtime, section 5 to shift work, section 6 to supervisors, section 7 to firm members, section 8 to apprentices, section 9 to apprentice ratio, section 10 relates to employers’ limitations, section 11 relates to incapacitated employees, section 12 relates to maintenance work, section 13 relates to shop stewards, and I will read, if your Honor please, section 14, which is entitled ‘Purchase of Materials.’

“ ‘In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done, on any material or article that has been made under conditions unfair to members of the U. B. of C. & J. of A., or unfair to employers of members of the U. B. of C. & J. of A., signatory hereto. The purchase, working, and sales of the following products is excepted:’—then follows a list of products.

“ ‘This paragraph that I have just read, your Honor, is identical with the paragraph 17 as revised which has previously been read from the correspondence between Mr. Ryan and Mr. Hutcheson on December 1, 1938. I will not read the list of the exempted products. Then follows the clause:

"Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission or the Sherman Anti-Trust Laws." [460]

"Section 15 relates to restrictions on work, section 16 union label, section 17 to work at building site, section 18 adjustment of grievances, section 19 termination of agreement, section 20 rate differential, 21 strikes, etc., and the contract is signed 'Redwood Manufacturers Company by J. W. Pearson, Vice President' and 'United Brotherhood of Carpenters & Joiners of America, Millmen's Union No. 1956, by Burt Goodman, President and Wm. J. Laskey, Secretary,' and is also signed by the 'California State Council of Carpenters, by J. F. Cambiano, President, and D. H. Ryan, Secretary,' and is further signed by the 'United Brotherhood of Carpenters & Joiners of America by J. F. Cambiano, General Representative.'

"The Court: Is that all?

"Mr. Howland: I was just looking to see what was on this addenda, your Honor. There is a page attached following the signature page which reads as follows:

"It is to be confirmed by the International of the U. B. of C. & J. of A. that they will not approve any agreements entered into between the employers and the local unions under their jurisdic-

tion in the counties of San Francisco, Alameda, Contra Costa, Marin, San Mateo, and Santa Clara, unless said agreements be uniform with respect to rates of wages, hours and working conditions.

"It is understood between the Company and the Union, that this section is being included with the complete understanding that in this and in future agreements, wage rates of the Redwood Manufacturers Company must be competitive with competing manufacturers whose plants are located outside of the six counties involved in this agreement. In general, such competition is as listed in Section 20."

"Then there is an addenda which relates to taking inventory on Saturdays and Sundays when necessary.

"Also attached as Exhibit A is a wage scale listing [461] classifications of employees and wages. That is all that I desire to read from 123-8."

Thereupon, Exhibit 57-3 for identification, was introduced in evidence and read to the jury, as follows:

"Mr. Howland: This letter is on the letterhead of the Commercial Fixture and Store Front Institute dated February 1, 1939, and is addressed to Fink & Schindler Company, 502 Brannan Street, San Francisco, and reads as follows:"

"Gentlemen:

"The San Francisco Employers' Council is soliciting subscriptions from individual shops. They provide for individual memberships and Trade Association memberships. I am of the opinion the

shops should not take out individual memberships. "If membership is to be taken out it should be an Association membership. This in view of the fact that our labor relations are on an Association basis.

Very truly yours,

COMMERCIAL FIXTURE &
STORE FRONT INSTITUTE
INC.

By J. G. ENNES,
Manager.

That signature is typed; there is no pen and ink signature."

Thereupon, Exhibit 60-9 for identification, being letter of same text to Mangrum, Holbrook & Elkus and from its files, was introduced in evidence as Exhibit 60-9.

Thereupon, Exhibit 124-48, being minutes of the Conference Committee of local unions, were introduced in evidence as Exhibit 124-48, and read as follows:

"Mr. Howland: This is the minutes of the meeting of August 27, 1938, the 'Conference Committee of Millmen's Unions 42, 550, 262 and 1956, Convened at 12:00 noon, Chairman William P. Kelly presiding.' Then the following:

"District Council Secretary Brother Dave Ryan was called upon and stated he called for a meeting of the Building [462] Trades employers and employees conference committee to meet with all concerned with the present situation wherein the plan-

ing mill owners have failed to pay the arbitration award. The meeting was held Thursday afternoon, in session from 1:30 p.m. till 5:30 p.m. John Cahill opened to the effect he understood the employers not agreeing to pay wanted definite assurance we carry out our part. If the mills pay then what insurance from us in carrying out our part."

Thereupon, the following was introduced in evidence from Exhibit 111 for identification, and read as follows:

"Mr. Howland: The minutes of Bay Counties District Council of Carpenters meeting on October 19, 1938, under the heading Remarks, the following appears:

"'Brother Cambiano reported in detail on settling of the mill situation.'"

Thereupon, paper marked for identification 115-49 was introduced in evidence, and read by Mr. Howland as follows:

"Mr. Howland: This letter is a carbon copy of a letter, and at the top in typewriting appears the following: "Identical communication sent to Mr. Edwards, Gaetjen, Lund, McKeon". It is dated January 27, 1939.

"'Mr. J. Ennis, Secretary
Cabinet Manufacturers Institute of California,
Northern Division
Fourth Floor, New Call Building
New Montgomery Street
San Francisco, California

“Dear Sir:

“At a meeting held Wednesday, January 18, 1939, in the New Call Building, between a committee representing Millmen's Unions #42 and #550 and the District Council of Carpenters, and representatives of the employers in the shops and mills in San Francisco, Alameda, San Mateo and Marin Counties, at which you were present, a motion was adopted by unanimous vote requesting the representatives of the employees in the shops and mills to [463] take whatever steps were necessary to bring about a meeting of the employers and the employees in the aforementioned Counties and also in the Counties of Santa Clara and Contra Costa, for the purpose of negotiating for an agreement to be uniform in hours, [464] wages and working conditions in all six counties.

“This is to inform you that we immediately requested the General Office of our organization in Indianapolis to have some representative of the General Office make arrangements for such a meeting with as little delay as possible.

“You will recall that at the above referred to meeting we were notified by the representatives of the Cabinet Manufacturers Institute and by the Lumber Products Association of San Francisco that they desired to terminate their contract as of May 1, 1939 as provided for in Paragraph #28 of that contract, and that they had served official notice in writing upon our organization to that effect some time prior to the meeting.

"This is to officially notify you that it is the desire of Local Unions #42 and #550 and the Bay Counties District Council of Carpenters to make certain changes in the last agreement we entered into with the Planing Mill Owners and Cabinet Manufacturers in this district, and we are notifying you in writing at this time in order to comply with the provisions of our last agreement.

"It is our desire to consummate a new agreement with as little delay as possible and we assure you that we will fully cooperate with you and your associates to the accomplishment of that end.

"With best wishes, we remain,

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary.' "

Thereupon, Exhibit 43-4 for identification was introduced in evidence as Exhibit 43-4, and read as follows:

"Mr. Howland: This letter is written on the letterhead of The United Brotherhood of Carpenters and Joiners of America, from the Hotel Stillwell, 838 South Grand Avenue, Los Angeles, California, dated June 3, 1939, addressed to Mr. William L. Hutcheson, General President, Carpenters' Building, Indianapolis, Indiana. [465]

"Dear Sir and Brother:

"My report for the week ending June 3rd, as per Secretary Ryan's request I went to San Fran-

cisco to attend a meeting of the Mill Owners Saturday afternoon. Upon arriving, we discovered the Mill Owners, at least a large proportion of them, had left town to take advantage of the Saturday to Tuesday holiday. There was no meeting. Same has been set for this coming Monday. I believe we will be able to arrive at an agreement. We may have some difficulty with Mr. Edwards, of Oakland, as he wants to add a number of doors to the exempted list.' "

Thereupon, U. S. Exhibit 175 for identification was introduced in evidence, and read as follows:

"Mr. Howland: This document is marked at the top, 'Rough draft subject to correction Agreement modifying Employer - Employee Agreement of Wages, Hours, and Working Conditions.'

"The Court: Signed by whom?

"Mr. Howland: It is signed by United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 42, William P. Kelly, A. W. Edwards, W. L. Wilcox. The United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 550, E. H. Ovenberg, W. C. O'Leary, also signed by Bay Counties District Council of Carpenters, D. H. Ryan; Lumber Products Association, Inc., J. A. Hart, Carl A. Warden; Cabinet Manufacturers Institute of California, Inc., Northern Division, J. G. Ennes. The text of the document is as follows:

"The memorandum as to payment of wages, established by Arbitration effective next pay day, dated August, 1938, is hereby made void.

"The rate of wages as established by Employer-Employee Agreement effective June 15, 1938 is hereby modified as follows:

"Effective October 18, 1938, inclusive, wherever the Journeyman Rate of Wage of One Dollar and Twelve and One-Half [466] cents per hour and One Dollar per hour appears, said rates shall be One Dollar and Six and one-quarter cents per hour and Ninety-six and one-quarter cents per hour respectively.

"The rates of wage of Apprentices shall be changed to:

(a) In the first year:

for the first 3 months.....	\$2.00
for second 3 months.....	2.50
for the last 6 months.....	3.00

(b) In the second year:

for the first 6 months.....	3.50
for the last 6 months.....	4.25

(c) In the third year:

for the first 6 months.....	5.00
for the last 6 months.....	5.75

(d) In the fourth year:

for the first 6 months.....	6.50
for the last 6 months.....	7.50

(e) After the fourth year the Journeymen's minimum rate of wage shall apply.

"Paragraph 17 is changed by mutual agreement to read as follows:

"17. In the interest of providing employment, it is agreed that no material will be purchased

from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto.

“The purchase, working and sales of the following products is excepted:”

“Then follows a list of the types of material, which I will not read, which has heretofore been read.

“18. The purchase and sale of the following products is excepted:”

“Then follows another list. This list is identical to the list previously read.

“Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that [467] of an interstate common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws.

“With reference to the San Francisco signature: Such payrolls in the hands of the Employers over and above such offsets claimed under the terms of the award are to be given to the Union representative upon demand and receipt.

“Unendorsed check is to be given to the Union representative upon endorsement or written order of the Employee in whose name the check is drawn and receipt by the Union.

“Such unsatisfied offsets due the Employer that exist after the application of checks endorsed to the employer shall be paid by the Union not later than the completion of the job on which the offset is due.

“It is to be confirmed by the International of the United Brotherhood of Carpenters and Joiners of America that they will not approve any agreements entered into between the Employers and the local Unions under their jurisdiction in the Counties of San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara unless said agreements be uniform with respect to rates of wages, hours and working conditions.’

“Attached hereto is a paper entitled, ‘Memorandum as to payment of wages established by arbitration effective next pay day.’”

“Mr. Faulkner: ‘The rate of Wages established by Employer-Employee Agreement effective June 15, 1938, shall be paid in the following manner:

“1. All Employees subject to the Agreement shall be paid the new rate of wage retroactive to July 10, 1938.

“2. The pay roll shall be made up so that the difference between the old rate of wage and the new rate is on a separate check. The check covering the difference shall be endorsed at the time of payment by the Employee to the Employer and a [468] receipt issued covering such check or checks showing name of employee and amount in detail, said receipt to be delivered to a representative of

the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. A memorandum receipt will be given the Employee if demanded. The check shall be applied to offsets arising from work subject to the old rate of wage as set forth in Paragraph 32 of the Agreement. The total amount so applied shall not exceed such offsets as agreed to by the Employer and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The amounts of the offsets agreed to shall be in writing and signed by the Employer affected and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The endorsed checks shall be held intact for the Union's accounting.

“3. In the case of offsets not existing or having been paid off, then the checks shall be endorsed to the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters in such manner as they shall designate. The Employer shall deliver said checks to a Representative of the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters upon demand and receipt for same.

“4. All funds withheld by the Employer as offsets against agreed to jobs subject to old rate, unless completed by March 1, 1938, shall be released to the Union. Upon completion of said jobs the Employer shall be refunded by the Union in the amount agreed to.

“5. The above practice shall terminate when mutually agreed upon through the medium of the Joint Committee referred to in Paragraph 27 of the Agreement.

“6. The failure of the Union to meet its obligation as to Paragraph 10 of the Agreement, by October 1, 1938, shall be prima facie evidence of a breach of contract on the part of the [469] Union. This memorandum shall not be construed as modifying the terms of the Agreement.

“7. Unadjusted matters shall be referred to the Joint Committee referred to in Paragraph 27 of the Agreement.

San Francisco, Calif. ✓

August 1938.

UNITED BROTHERHOOD OF
CARPENTERS & JOINERS
OF AMERICA MILLMEN'S
UNION No. 42,

with the signatures 'William P. Kelly, A. W. Edwards, W. L. Wilcox.' ”

“The Court: They have all been read heretofore, haven't they?

“Mr. Faulkner: No. United Brotherhood of Carpenters & Joiners of America Millmen's Union No. 550, E. H. Ovenberg, W. C. O'Leary. Bay Counties District Council of Carpenters, D. H. Ryan, Lumber Products Association Inc., J. A. Hart, Carl A. Warden. Cabinet Manufacturers Institute of California Inc. Northern Division, J. G. Ennes.' ”

"In other words, that is a separately executed paper, your Honor."

E. M. CHRISTENSON

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Clark:

I am personnel director of the Atlantic Seaboard, with J. C. Penney Company. I have been with that Company since 1918. Prior to the position I have now, I was district manager of northern California. I became district manager in 1936 and served until January 1, 1940, with headquarters in Oakland. I had occasion to plan the installation of a store in South San Francisco, in 1938. We were going to use fixtures from the closed Vacaville store, and we would need additional fixtures to complete the job. [470] We placed the order for the additional fixtures with the Grand Rapids Fixture Company. Exhibit 176 for identification is that order.

Thereupon, the document was received in evidence and marked U. S. Exhibit 176. It was read to the jury, as follows:

"* * * this is an order blank of J. C. Penney Company, Portland, Oregon, dated August 25, 1938, to Grand Rapids Store Equipment Company, 'Ship to J. C. Penney Company located at South San Fran-

(Testimony of E. M. Christenson.)

cisco, State of California, freight via S. P., delivery September 12, 1938, Terms, usual.' Then there are three separate pages of quantities of merchandise, fixture equipment for that store."

The order was cancelled. I recommended it be cancelled.

Thereupon U. S. Exhibit No. 177 was identified as a request sent by the witness to the construction department to cancel the order of Grand Rapids.

"Mr. Clark: We will offer it in evidence.

"Mr. Faulkner: We object to that telegram from Mr. Christenson to his own boss on this subject matter as hearsay as to the defendants.

"The Court: Overruled.

"(The telegram was marked 'U. S. Exhibit No. 177.')

"Mr. Clark: I will read it to the jury, your Honor.

"The Court: Read it.

"Mr. Clark: 'Oakland, Calif., September 3, 1938.

" 'F. R. Hesser—J. C. Penney Co

" '330 West 34 St NYK—

" 'Union served notice they will not handle Grand Rapids or Webber fixtures for South San Francisco store Vacaville fixtures okay Insist fixtures must be made under same conditions wages as Frisco area regardless of union stamp.—Consider having orders transferred to Unit Built. Union contacting me again Answer Western Union—

E. M. CHRISTENSON.' " [471]

(Testimony of E. M. Christenson.)

The notice served by the union that they will not handle Grand Rapids fixtures was at a telephone conversation.

"Mr. Faulkner: I ask that go out.

"The Court: Yes. Who did you have the conversation with?

"A. Who called me? I don't know.

"The Court: Well, tell us all about the conversation.

"Mr. Faulkner: Just a moment. We object to a conversation with an unidentified person as hearsay.

"Mr. Clark: We will identify him.

"The Court: Mr. Clark says he will identify the person.

"Mr. Clark: Q. Who did he say he was?

"A. He said he was a friend of the union, or he was speaking for the union and a friend of the Penney Company.

"Q. What did he say?

"Mr. Routzohn: I object; he is not answering the question.

"The Court: Overruled.

"Mr. Faulkner: A friend of the Penney Company.

"The Court: A member of the union.

"Mr. Faulkner: No, he did not say he was a member—

"The Court: Read the answer of the witness.

(Record read.)

(Testimony of E. M. Christenson.)

"Mr. Faulkner: We object as hearsay and not binding—

"The Court: Overruled.

"Mr. Clark: Q. So it will be straight all around, what did he say when he talked to you?

"Mr. Faulkner: He already answered it:

"The Court: Overruled."

He said what is stated in the wire,—that is the matter of conditions that existed in the Bay Area, whereby the union would not set fixtures that did not bear the stamp, and indicated the fixtures should come into the Bay Region under the same conditions [472] and so forth that existed in Frisco. I said, "Well, we have these fixtures coming from Grand Rapids." He said, "Yes, we know all about that." "Those fixtures," I went on to say, "have a union label." "Yes, we know all about that, but they still would not comply with the regulations that we demand fixtures to be installed under in this area." Then I asked him about the Vacaville fixtures. He stated they were satisfactory because we owned those fixtures and the conversation ended by him stating he would contact me again.

After we cancelled the Grand Rapids order, we placed the order with Unit-Bilt Fixture Company, of San Francisco.

Thereupon, invoice covering such order was introduced in evidence as U. S. Exhibit No. 178, over the objection it was hearsay as to everyone but the Unit-Bilt Fixture Company. Unit-Bilt Fixture

(Testimony of E. M. Christenson.)

Company, of San Francisco, finally filled the order for the additional fixtures.

Cross Examination

By Mr. Faulkner:

Unit-Bilt Fixture Company in 1938 and for some time prior thereto, had a relationship with the J. C. Penney Company. They had filled fixture orders for us. We had, in fact, blanket orders placed with them. It was the practice of J. C. Penney Company in 1938 to select fixture people in various localities to build fixtures for them in anticipation of their needs. The fixture company that had supplied those requirements in San Francisco prior to August 25, 1938, was Unit-Bilt Fixture Company. The next nearest fixture company to San Francisco where we had a similar arrangement was in Portland, to the north, and Los Angeles to the south. The South San Francisco store was a new place. We were abandoning a store in Vacaville. The fixtures from Vacaville were to be installed in South San Francisco. The fixtures in Vacaville were moved by ourselves; we didn't have anyone move [473] those. We usually have our construction department, or representatives of Grand Rapids install them in South San Francisco. The fixtures from Vacaville were installed by the Unit-Bilt Company. It was our intention that who ever installed the fixtures would install the whole job—both the Vacaville fixtures and the new fixtures.

(Testimony of E. M. Christenson.)

The paper you show me is an order placed by our construction department simply to transfer the fixture account from our Vacaville store to our South San Francisco store. It is dated August 25, 1938—the same date as our order with the Grand Rapids people. I know Mr. Roselyn and the Unit-Bilt Fixture Company. They had installed fixtures for us. They prepared fixtures in advance of installation and kept them in stock for our company. On August 25, 1938, they had fixtures in stock for our company. I know nothing about the instrument shown me. I do know that the fixtures listed in the document were ultimately installed, in our South San Francisco store, pursuant to direction of J. C. Penney Company to Unit-Bilt Fixture Company. We have shipped fixtures from different places a greater distance than from Portland to San Francisco. We had shipped Grand Rapids fixtures into California prior to this time, during the period that Unit-Bilt was acting for us.

I have testified to a conversation with the person who told me he was a friend of our company and that he spoke for the union. He mentioned he spoke for the union. Mr. Roselyn wasn't a party to that conversation, that I know of. I never spoke to Mr. Roselyn, our agent, whether there ever existed any arrangement to keep Grand Rapids stuff out of here. Our relationship with Mr. Roselyn was satisfactory. I knew Mr. Roselyn very well in 1938 and talked to him frequently. I had this telephone

• (Testimony of E. M. Christenson.)

conversation and exchanged wires. Mr. Roselyn and I had dealings with Grand Rapids Company. The union man said he knew that we [474] had ordered Grand Rapids fixtures but it did not comply with the regulations that were essential to installation here. That is the substance of it. That telephone call was never discussed with Mr. Roselyn. The Unit-Bilt Fixture Company covered everything in the Grand Rapids order, I believe; not more. It covered installation the Grand Rapids did not.

Thereupon, paper shown to the witness and referred to in his testimony was marked Defendants' Exhibit for identification.

I don't recall if there was additional material ordered from Unit-Bilt. The words, "Union served notice," in the telegram referred to the telephone conversation. I am sure that on September 3 we had not placed any part of this order with the Unit-Bilt. Grand Rapids made the original fixtures in Vacaville.

Redirect Examination

By Mr. Clark:

I assume the Grand Rapids fixtures installed at Vacaville were from Portland. Order to Grand Rapids is August 25. Unit-Bilt Fixture order is October 20, 1938.

Thereupon, Exhibit 178 was read as follows:

"* * * the Government Exhibit 178 is on the order form of the Unit-Bilt Fixture Company, 8th and

(Testimony of E. M. Christenson.)

Folsom Streets, San Francisco, California, and is dated October 20, 1938. 'Sold to J. C. Penney Co., Inc. Store No. 1539, South San Francisco, California. Our Order No. 3196. Your Order No. R. Williams. Terms Net. Ship via Installed. Labor and material necessary to manufacture the following fixtures:'—then follows a list of equipment and labor charges."

Recross Examination

By Mr. Faulkner:

Paper of the Unit-Bilt is an invoice—a bill for something already supplied. Removal of fixtures from the Vacaville store started early in September, following this telegram. [475] It is not a fact, to my knowledge, that before we cancelled any order with Grand Rapids, Unit-Bilt Fixture Company had part of the order. Orders of that kind that came from New York do not pass through my hands; they sometimes emanate direct from New York. I had a discussion with Mr. Roselyn about the San Francisco job after the order had been placed. I don't remember any conversation that the home office had placed an order with Mr. Roselyn before the Grand Rapids had been cancelled.

Thereupon, minutes from Exhibit 18 were read as follows:

"Mr. Lehman: From the minutes of this Union 550, April 29, 1937:

“ ‘Brothers Ovenberg and O’Leary were absent attending a Conference meeting in San Francisco with the Mill Owners.’

“ ‘Same Union, Minutes of July 15, 1937:

“ ‘Reports of officers and Committee, Brothers Wilson, Irish, O’Leary, and Ovenberg reported the proceedings of the District Council, the recent referendum on new agreements between employers and employees was carried by a large majority.’

“ ‘Minutes of the same Union, August 26, 1937:

“ ‘Brothers O’Hara, Cicinato, and O’Leary reported on the Executive Officers Meeting with Mr. Edwards.’

“ ‘The minutes of Union 550, December 16, 1937—December 18th are:

“ ‘Conference Committee Brothers Ovenberg and O’Leary attended a meeting with the Mill Owners in San Francisco.’

“ ‘Continuing from the minutes of Union 550, Exhibit 21, from the minutes of July 22, 1938: ‘The minutes of the B. Trades Council were read and commented on by Delegate Irish, the Council voted to Back the Millmen in the enforcement of our new agreement. Business Agent O’Leary gave his weekly report stating the Building Trades Business Agents voted to back Local 550 in the Arbitration Award.’ [476]

“ ‘Mr. Tobriner: I object to the reading ‘B. Trades’ as ‘Building Trades,’ and I move that it be stricken.

“ ‘The Court: The objection is overruled.

"Mr. Lehman: Continuing from the minutes of Union 550, August 5, 1938:

" 'President Sholden appointed Brothers Irish, Ovenberg, O'Leary and Cicinato to confer with Mr. Edwards, of the Wood Products Inc., who is seeking admission to address our meeting.'

"Continuing with August 19, 1938:

" 'Brother Ovenberg reported on a meeting held with Mill Owners August 16th and Brother Sholden reported on our meeting held in San Francisco August 13th stating that both Brother Muir, of the General Office, and Brother Ryan, of the D. C. were well pleased with our program.'

"The same minutes of August 26, 1938:

" 'Conference Committee, Brothers Bennett, Irish and Sholden gave a resume of the meeting held in San Francisco Saturday August 20 and also on the activities of our special field men.'

"Minutes of Union 550, September 16, 1938:

" 'Brother Ovenberg reported on the Conference Committee meeting held Saturday, the 3rd. Brother Dave Ryan is at the General Office for instructions on our mill agreement enforcement.'

"Continuing, October 14, 1938:

" 'Business Agent O'Leary was called and explained that he had went around with Business Agents Wilcox of No. 42 and William Kelly, President of the Conference Committee and Joe Cambiano, of the United Brotherhood and contacted the Mill Owners Association heads in all the above counties.'

“The ‘above counties’ referred to are Santa Clara, San Mateo, San Francisco, Marin, Alameda and Contra Costa.

“ ‘Brother Cambiano gave us a good talk on the proposed agreement and urged its adoption. A motion was made and seconded [477] that we approve and adopt the recommendation of the Conference Committee as submitted by the Mill Owners. Board Member Abe Muir was present and gave his usual good talk and stated he did not want to hear any criticism of the Committee, as he felt they had done a good work. Brothers Kelly and Wilcox gave us a few remarks. Brothers Murray, Cicinato, Crookshank and Irish, Ovenberg and several others spoke on the question. Vote called for. Brother Gardner was appointed judge and Joe Correia and Earl Smith tellers, the ballots were passed out, collected and counted, with the following results, 246 yes votes and 10 no votes and two blanks, whereon President Sholden announced the motion carried by Local 550 with Local No. 42 to vote on the same compromise agreement Monday evening October 17, '38.’

“Continuing with the Minutes of 550, January 13, 1939:

“ ‘By motion our present Conference Committee, consisting of Brothers O’Leary, Ovenberg, Sholden, Irish, O’Hare, Bennett, and Mickelsen were appointed to serve for Local 550 during 1939 as a Conference and Negotiating Committee.’

“Continuing with the Minutes, March 10, 1939:

“‘Reports Brothers Ovenberg, O’Leary, Irish and Sholden all gave reports on the Conference Committee meetings with our employers on the question of a new agreement for the six Bay counties.’

“‘Continuing with the Minutes of 550, March 24, 1939:

“‘Brothers Ovenberg and Irish of the Conference Committee spoke of holding several meetings with Mill Owners of the Six Bay Counties and were awaiting information from the General Office on certain phases regarding an agreement for this District the mill owners seem willing to continue the present hours, wages and working conditions.’

“‘Continuing with the minutes, April 14, 1939:

“‘Brothers O’Hare, Irish and Ovenberg all reported for [478] the Conference Committee on their meetings together and also with the Mill Owners on a new agreement.’

“‘The same minutes, April 28, 1939:

“‘Conference Committee, Brothers O’Leary, Ovenberg, Irish and Sholden reported on the activities of the Committee with discussions on exempt materials.’

“‘May 5, 1939, Minutes of Union 550:

“‘Brothers O’Leary, Sholden and Ovenberg reported for the Conference Committee stating they were still busy trying to negotiate a new agreement with our employers for this district.’

“‘May 12, 1939:

“‘President Sholden reported for the Conference Committee and Brother O’Leary read notes on Sat-

urday's meeting, stating a motion was passed asking Bothers Cambiano and Ryan to use their best efforts in effecting an agreement for us with our employers.'

"Minutes of Union 550, June 9, 1939:

"Special Meeting held called by our Executive Officers for the purpose of considering and voting on a new agreement covering our Six Bay Counties, namely, San Francisco, Alameda, Contra Costa, Marin, San Mateo and Santa Clara Counties; the agreement was read by Brother O'Leary and explained by our Conference Committee. After discussion a motion was passed that we proceed to vote by ballot. Brother Cicinato and Harder were appointed tellers, with the following results, 104 Yes votes, 2 No votes.'

"Continuing with the minutes of Union 550, July 7, 1939:

"Brothers Sholden and O'Leary told of the Conference Committee meetings and Brother Ovenberg reported that Brother Ryan was desirous of another meeting with Mill Owners.'

"Minutes of November 10, 1939:

"President Irish declared R. S. O'Hare, J. P. Sholden, [479] W. C. O'Leary, E. H. Ovenberg and C. H. Irish as our elected Conference Committee.'

"From the same union minutes 550, March 1, 1940:

"Business Agent Charles Roe gave his report for two weeks was accepted.'

"If your Honor please, I would like to offer in

evidence and then read certain minutes from Exhibit 121 For Identification, minutes of Local Union 1956.

“Mr. Faulkner: Our objection goes to each part of these minutes, that is understood, is it?”

“The Court: Very well, overruled.

“(The minutes were marked ‘U. S. Exhibit 121’ in evidence.)

“Mr. Lehman: From the Minutes of 1956, May 20, 1937:

“‘Brother Cambiano delivered a speech on industrial organization; also the reading and explanation of our agreement with the Redwood Manufacturing Co.’

“Skipping several lines, in the same meeting:

“‘The agreement was accepted 100 per cent.; also a standing vote of thanks was accorded Brother Cambiano for his hard work.’

“Continuing with the Minutes of Union 1956 for October 27, 1938:

“‘Brother Cambiano read our new agreement and discussed several points.

“‘Motion made, seconded and voted aff’—affirming—‘that we accept our agreement with the proviso that the paragraph relative to the Six County setup be inserted. Vote was 53 Yes, 1 No, and 3 blanks.’

“From the same minutes of the Union, October 26, 1939:

“‘A vote was taken to adopt the county setup pertaining to wages and hours. It carried unanimously.’”

JOHN KLIER [480]

called as a witness in behalf of plaintiff, was duly sworn and testified as follows:

Direct Examination

By Mr. Burdell:

We have a little retail lumber yard and buy and sell lumber, including millwork. I know Mr. Walter C. O'Leary. I had a conversation with him in the spring of 1939 in our lumber yard. He told us at that time we would not be able to bring molded knotty pine in any more, and if so, they would be obliged to have a picket out front. I had purchased the molded knotty pine from Pyramid Lumber Sales Company, represented by Chris Wininger. At that time we had ordered some of that material, and it happened to come in in one of our competitor's yards, who happened to have a spur track, and that is when Mr. O'Leary spotted it. The lumber came in at the yard of Sheehan & Ballard, by railroad. It was a car of knotty pine and it was unloaded. It stood there for about a month and O'Leary said we would not be able to take it out of the yard, and after about 30 days he said it was all right to take it out. I believe he said, outside of the city limits, or outside of that territory. I saw it after it was unloaded. There was a sign on it that said, I believe, "Hot Cargo" to Teamsters Union and Millmen's Union. A while later there were several of them came in—Mr. O'Leary, Les Roberts, who was head of Building Trades Council in Contra Costa

(Testimony of John Klier.)

County, and Bob something from carpenters headquarters, and the Labor Union was there. They went through all of the stock and told us anything that did not have the label stamped on it we had to get rid of, or burn it up. My brother was present at the time. They stayed practically all morning—came a little after eight o'clock and left shortly before twelve. Later on Mr. O'Leary came about once every two weeks for a while. He just looked around. I didn't have no conversation with him at those times, because we never had any [481] patterned stock on hand. We didn't continue to purchase knotty pine from Mr. Wininger for a while—I would say a good six months. We got one shipment of knotty pine locally from a local mill. I do not recall the price, from Mr. Wininger. It was considerably cheaper than what we paid locally.

Cross-Examination

By Mr. Faulkner:

We run a mill in El Cerrito—Klier Bros. Lumber Company.

Cross-Examination

By Mr. Routzohn:

The knotty pine was objected to by Mr. O'Leary in the spring of 1939. It came from Ewauna Box Company. I believe it is in Klamath Falls, Oregon. I knew when I ordered that Mr. Wininger was to purchase from the Ewauna Box Company, at Klamath Falls. He had been getting all of his material

(Testimony of John Klier.)

from that one concern. I knew the articles that were objected to did not have the union label.

I did not know whether Ewauna Box Company was organized at all,—either C. I. O. or any other organization. We knew it did not have any stamp on it. I understood the import of the words “Hot Cargo” as meaning it was non-union. This particular material did not have any label of any kind on it. What he was objecting to was the fact it did not have the union label. We have had similar cases which had the stamp on it but he would not recognize it. It was an A. F. of L. stamp. It was a shipment of doors from Robinson Manufacturing Company, up north somewhere. It had what I understand to be the stamp of the United Brotherhood of Carpenters and Joiners of America, the union label on it. That was not the local stamp. That is the stamp issued by the United Brotherhood to the manufacturers that manufacture things by agreement with the local unions.

Redirect Examination [482]

By Mr. Burdell:

This label was the United Brotherhood; Mr. O’Leary told me right out he would not recognize it if it came from the north, regardless of whether or not it had the stamp of the United Brotherhood. I am familiar with the stamp of United Brotherhood of Carpenters and Joiners. We have no stamps. I have noted different numbers on the stamps. I imagine

(Testimony of John Klier.)

they refer to a particular mill, because we have had shipments from different mills and they all seem to have a different number. You could tell the location of the mill from the number on the stamp and whether or not it was locally manufactured, or a foreign label, or Washington or Oregon.

Recross-Examination

By Mr. Rutzohn:

I have seen the stamps that come in from outside lumber yards. They are all alike, except they have a different number. I believe it is not a local stamp—it is a stamp issued by the United Brotherhood, from Indianapolis.

Thereupon, Exhibit 5 for identification was introduced in evidence, being minutes of Millmen's Union No. 42, and read from as follows:

“Mr. Lehman: Reading from the minutes of January 14, 1936:

“‘B. A. Helbing addressed the Brotherhood on the value of picket lines at some of the homes being built at the present time. He stated that this was urgently necessary to make the builders and contractors aware of the fact that Northern finish was looked upon with disfavor.’

“The same union minutes, No. 42, June 23, 1936:

“‘Brother Sammet furthered B. A. Helbing's report of the meeting with the mill owners and cabinet manufacturers outlining in detail some of the issues discussed.’

“Reading next from Government’s Exhibit 8 of the same [483] Union 42, the minutes of July 26, 1938:

“Brother Kelly read the new agreement and stated that the East Bay mill owners not wanting to go along with the arbitration award. It was stated that, if the mill owners and cabinet shops in Oakland refused to abide by the arbitration decision, that the cabinet shops and mill owners in conjunction with Locals 550 and 42 in San Francisco would force them to abide by the arbitration award.’

“Minutes of Union 42, October 11, 1938:

“Brother Kelly: The associations in San Francisco want to hold the agreement. Brothers D. Ryan, Muir and President Hutcheson had a meeting with the secretaries of the Mill Owners and Cabinet Manufacturers Association. The reason for this meeting was to protect the shops and mills that pay \$9 against the \$8 scale of P. M. Co.—That is the Pacific Manufacturing Co.—who are at the present time getting all the work on low bids.’

“Mr. Routzohn: We will stipulate the letters P.-M. mean Pacific Manufacturing Co. Where are they?

“Mr. Lehman: In Santa Clara. Continuing with the minutes of Union 42, on October 25, 1938:

“Brothers Cambiano, of the general office, P. M.—that is Pacific Manufacturing—and Redwood Manufacturing Co. will sign new agreements this coming week. Few changes made, P. M. did not want an exempt list. They manufacture all their stock.’

"Mr. Routzohn: Will you stipulate where the Redwood Manufacturing Company is?

"Mr. Lehman: In Pittsburg, California.

"Mr. Routzohn: In what county?

"Mr. Lehman. Contra Costa County.

"The same minutes of Union 42 for November 15, 1938:

"Conference Committee. Brother Kelly had a meeting Tuesday evening in the office of the District Council planning a [484] program for Wednesday night. Wednesday evening meet in the Call Building. There were 14 mill owners and 17 union delegates present. Brother Cambiano acted as chairman. Brother Ryan pointed out that an arbitration clause should be inserted in the agreement for the six counties."

"Continuing from the minutes of Union 42, on November 29, 1938:

"B. A. Wilcox had a meeting with Brother Cambiano and O'Leary and Mr. Edwards and signed an agreement for Oakland. Brother Ryan secretary of District C. of C.—meaning the District Council of Carpenters—refused to sign the agreement. Agreement not satisfactory to San Francisco Mill and Cabinet Association."

"Same minutes for January 3, 1939:

"The committee that was appointed to investigate the ways and means of financing a special business agent made the following recommendation: (1) That an additional business agent be elected to serve until July 1, 1939. (2) That if local union opposed

the recommendation (1), that both business agents be put on a 5½ day week basis and a \$40 per month allowance for auto expenses. M. & S.—meaning moved and seconded—that the report of the committee be concurred in. (Carried)'

"Minutes of Union 42 for January 17, 1939:

"'Brother Kelly reported of a meeting to be held Wednesday afternoon January 8. Brother Ryan secretary of District Council called this meeting for the purpose of presenting the agreement approved by the general office before the cabinet association and Lumber Products Inc. of San Francisco. The Committee of No. 550 and No. 42 should meet and report back to the local unions. We should try to get rid of the exempt list.'

"March 21, 1939:

"'Visitors. Brother Cambiano of the general office [485] appeared before the local and stated why he was here. Reported on the meetings being held with the mill owners and the progress of these meetings.'

"'And concluding with Exhibit No. 6 already in evidence, continuing with the minutes of Union 42, June 6, 1939:

"'Conference Committee. Brother Helbing and Brother Wilcox reported agreement o. k. and spoke about Mr. Edwards and his exempt list.'

"Minutes of August 1, 1939:

"'Conference Committee. Brother Helbing reported the new agreement was sent to Los Angeles for Brother Cambiano to sign. Cambiano is in town

and will not sign until approved by the general office.

"Continuing, from May 7, 1940:

" 'Negotiation Committee met Monday and Brother Cambiano was absent, so Mr. Person and Pierce would not do business in Brother Cambiano's absence. Will meet Thursday and Brother Cambiano will be present.' "

Thereupon, Mr. Tuttle offered the whole of the Redwood Contract in evidence and it was deemed read. (U. S. Exhibit 123-8.)

Thereupon, the following portions (section 35, page 30) of Exhibit 65 from the constitution and by-laws of the Building and Construction Trades Council were read in evidence:

" 'Before a strike can be called against a general contractor fair to union labor, doing an interstate or local business, or any subcontractor doing business for said general contractor, and union conditions prevail throughout, the matter in dispute must be submitted to the president of this department and to the presidents of the international unions involved, before any action can be taken by a local council.

" 'Local councils affiliated to this department shall be prohibited from calling a strike against any general contractor [486] fair to union labor, doing an interstate or local business, to correct any grievance of a jurisdictional nature, before getting the sanction of the president of this department, and that of

the president of the international unions directly involved affiliated to this department.'

"On page 1 it says:

"President Joseph A. McInerney, Washington, D. C.'

"The Court: It seems to me that you could read this at any time later on, if you wish to do so. I do not see any necessity of reading it now. Go ahead and read it.

"Mr. Tobriner: This is from the constitution and by-laws of the Building Trades Council, section 7, page 8:

"The executive board shall attend to all matters referred to it by the Council. It shall be its duty to make written reports of each meeting of the Council; to formulate the measures and to suggest remedies for immediate and permanent benefit; to act as an executive board in such matters as may be referred to it by the Council.'"

Thereupon, the Government rested.

Thereupon Mr. Tuttle, in behalf of the United Brotherhood of Carpenters and Joiners of America, moved the Court to hold that the Government had not made a sufficient case as regards that defendant, and to dismiss the indictment, or to [487] direct a verdict, as the proper practice might be.

Thereupon Mr. Howard moved for a dismissal, or in the alternative, for a directed verdict of acquittal in behalf of the defendants: The Bay Counties District Council of Carpenters of the United Brotherhood of Carpenters and Joiners of America; The United Brotherhood of Carpenters and Joiners of

America Millmen's Unions No. 42. No. 550, No. 1956 and No. 262; J. F. Cambiano; Dave Ryan; James Ricketts; Charles Roe; Charles Helbing; D. J. Edwards; W. P. Kelly; H. Lidley; W. L. Wilcox; Walter O'Leary; M. D. Cicinato; J. P. Sholden; C. H. Irish; John Doe Smoot, the actual name is George Smoot; Otto W. Sammet; and Emil Ovenberg.

The motion was made upon the grounds that there was no sufficient evidence established to show a violation of the Sherman Act as to those defendants, or any of them, and the motion was made collectively and individually, and upon the further grounds that the evidence affirmatively showed that the union defendants were acting in connection with or as a result of a labor dispute, and that any acts shown in the evidence were immunized by the Clayton Act and the Norris-LaGuardia Act; that the Government has failed to prove the allegations of paragraph 29 of the indictment which referred to the lack of a labor dispute and that the Unions were not carrying on legitimate objectives of labor; separately as to each individual defendant and each Union; that there was the lack of any clear proof that he or it participated in, authorized or ratified any unlawful act; that there was no proof of any unlawful intent on the part of any defendant.

Thereupon the employer defendants moved for a directed verdict and also moved to strike certain evidence.

Thereupon San Francisco Building Trades Council, by Mr. Tobriner, and Alameda Building Trades

Council, by Mr. Todd, [488] joined in the motions to dismiss, or for directed verdict.

Thereupon the motions to dismiss were granted as to each of the following named defendants, upon the ground of the insufficiency of the evidence to convict: United Brotherhood of Carpenters and Joiners of America, Millmen's Union No. 262; Eugene S. Elkus, Richard Kuhn, S. Kulcher, H. Lidley, James Ricketts, George Randolph, Joseph J. Schmidt, Henry Schulte, J. P. Sholden, Herman Sichel, F. S. Smoot, D. J. Edwards.

As to all of the other defendants in the case, the several motions to strike from the record certain portions of the evidence to dismiss and for a directed verdict, were denied. All of the defendants were granted an exception to the Court's ruling.

"Mr. Howard: If the Court please, may I call to your Honor's attention one matter. We would feel amiss if we didn't at this time call to your Honor's attention certain applications which were made prior to the trial to abate as to particularly three of the defendants here relative to their Grand Jury testimony.

"Your Honor, since you ruled on the demurrer to those pleas, there have come down two cases, one by our Supreme Court, which I would like to direct your Honor's attention to and which I think is practically controlling with reference to our plea in abatement. For that reason we would like to renew our application to abate as to those three defendants.

"In renewing that application, your Honor, I

think the courts take judicial notice, but we would request the privilege of showing the proceedings which were taken before your Honor [489] in connection with the Grand Jury investigation wherein we moved in behalf of the defendants to quash the subpoenas that your Honor had presented to you as to contumacious witnesses and the three defendants I have in mind, namely, are Dave Ryan, Mr. Helbing and Mr. O'Leary.

"In connection with this application that we are renewing we would very respectfully request the privilege after the courts have considered this matter of introducing that proceeding taken at the time relative to the presentment of those defendants, their refusal to testify, your Honor's direction that they so do, and we would also like as a part of this application the privilege of then introducing the Grand Jury transcript which shows what they actually testified to.

"If your Honor will permit it, I will give you those citations.

"The Court: Well, you have them in writing?

"Mr. Howard: I have the volume of the Supreme Court right here, your Honor, which I can pass to you.

"The Court: You have some memorandum, have you, you wish to submit?

"Mr. Howard: I did not have a written form of memorandum, but there are two cases I would like your Honor to consider in this connection. The one, and the principal case, I would say, is an opinion by

the Supreme Court, *Edwards v. the United States* that is reported in volume 61, Supreme Court Reporter—I can hand it to your Honor.

“The Court: Is that it?”

“Mr. Howard: Yes.

“The Court: That is the record of the case?”

“Mr. Howard: That is the Supreme Court opinion.

“The Court: Well, if you just leave that for me—

“Mr. Howard: And for convenience of the Court, I might [490] hand you copies of those pleas so you can consider them in connection with this.

“The Court: Thank you very much; I will do that, and I will announce my ruling upon that.”

“Mr. Howard: If the Court please, for convenience I will also pass up our copy of the reporter’s transcript relating to the presentment of those witnesses.

“The Court: Yes; leave them with the clerk. I will reserve my ruling on the matter.

“Mr. Burdell: Is this a request for a reconsideration of the ruling on the demurrer to those pleas?”

“Mr. Howard: Yes. We are reurging the application for immunity in behalf of those defendants on the same ground we previously urged.

“Mr. Burdell: It does involve now the question of the sufficiency of the pleas?”

“Mr. Howard: That is correct.

“The Court: Judge, did you wish to say something?”

"Mr. Routzohn: The only thing I care to state, your Honor, is that I was not informed as to these pleas and only on Saturday was I advised of what had transpired in the Grand Jury room so far as our witnesses were concerned.

"Of course, your Honor is familiar with what happened so far as your ordering the witnesses back to the Grand Jury room to give their testimony and, your Honor, the information that we had from our witnesses is to the effect that they not only produced the books and records that were demanded at that time by the Government attorneys, but that the Government attorneys after the witnesses had been sent back by your Honor began to propound various questions relative to what had transpired, they went into the history of the case, more or less, and some of the things that have been brought out in evidence here when [491] Mr. Helbing and Mr. Ryan and Mr. O'Leary were present in the Grand Jury room were propounded to those witnesses, so that we feel that the district attorney, or the Government attorneys, rather, went way beyond the authority that is granted to them under the Constitution, and that they even went further than we feel your Honor intended when you remanded those witnesses to the Grand Jury room.

"The Court: Well, as I understood it, Mr. Howard is filing also a transcript.

"Mr. Howard: Well, in connection with this application we ask that privilege, that your Honor consider these pleas and from the standpoint of a plea,

your Honor passed upon it previously as a plea and now those facts as stated by Judge Routzohn, I think, sufficiently appear in our plea, and I have handed your Honor copies of those.

“Mr. Routzohn: I would like to suggest this to your Honor:

“Of course, we are not furnished with a transcript of what took place in the Grand Jury room, but it seems to me that your Honor in order to inform himself would be entitled to a transcript of the testimony in the Grand Jury room, and we would like to have your Honor review that.

“Mr. Howard: Yes, we are making that application that your Honor consider the testimony from the transcript of the proceedings in the Grand Jury.

“Mr. Routzohn: So I would like to add my position to what Mr. Howard stated, I would like to add this is also a renewal of the motions that were made on last Thursday, I think, or Wednesday, for a dismissal of the three defendants, Ryan, O’Leary and Helbing.

“Mr. Howard: We are offering the transcript, your Honor.

“The Court: Very well. We will be in recess a few minutes.” [492]

J. G. ENNES,

called as a witness on behalf of the defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Faulkner:

I am Secretary-Manager of Commercial Fixture and Store Front Institute. Prior to that I was Secretary of the Cabinet Manufacturers Institute, prior to that I was in the actual cabinet manufacturing business for about ten years, in San Francisco. I was associated with Fink & Schindler Company. I went as a representative of the creditors and eventually they paid the entire indebtedness and I bought an interest as one of the partners. I withdrew from that company about six months prior to becoming secretary of the Cabinet Manufacturers, some time in 1933.

The nature of the cabinet manufacturing business that is carried on by defendant cabinet manufacturers, who were members of the Commercial Fixture & Store Front Institute consists of several services and the fabrication of certain material. They have salesmen in the field to solicit work. They make diagrams to show how the flow of customers would be and the relative amounts of space necessary for the merchant's stock. The purpose of the diagram or drawing is to give the merchant a clear conception of how his store would look when completed.

When a cabinet manufacturer undertakes the

(Testimony of J. G. Ennes.)

work, he undertakes all of the work. He would prepare the woodwork with his own mechanics, installation with another group of mechanics, and prepare the finishing with another group of mechanics.

Wall cases are all wood, showcases are part wood.

Thereupon the drawing or illustration was marked for identification defendant's "Exhibit I".

"Q. In connection with the carrying on of that business, [493] Mr. Ennes, what union groups are employed in your business?

"Mr. Clark: Your Honor, that is immaterial and irrelevant. The charge here is that he joined in the combination.

"The Court: Objection is sustained.

"Mr. Faulkner: Q. During the period of time, Mr. Ennes, between 1936 and 1940 did the Cabinet Manufacturers, defendants in this case, have contracts, employer-employee contracts, with certain unions other than Millmen's No. 550 and Millmen's No. 42? A. Yes.

"Mr. Clark: I object to that and move to strike out the answer.

"The Court: The answer may go out.

"Mr. Clark: As immaterial.

"The Court: The objection is sustained.

"Mr. Clark: The question is whether or not they joined in the charge.

"The Court: The objection is sustained, it is immaterial.

(Testimony of J. G. Ennes.)

"Mr. Faulkner: The same general stipulation applies, that an exception goes to each ruling made in the employers' case, that will apply?"

"The Court: I have repeated it many times, how many more times do you wish?"

"Mr. Faulkner: Does it apply?"

"The Court: Yes, it does."

I was acting as Secretary-Manager of Cabinet Manufacturers Institute in the years 1935, 1936. We commenced negotiations with Millmen's Union 550 or 42 in 1935. I do not recall any written contract with the unions prior to 1935. I recall in 1936, there were certain negotiations in which I participated concerning terms of employment of members of Millmen's Union 42 and 550. I signed Exhibit 131, which is the contract of 1936. [494]

The negotiations came about because there was received a communication from the Locals, they wished to negotiate a new agreement, increase wages and things of that nature. It was a letter. To the best of my memory negotiations lasted two months or greater. I attended the various meetings, representing Cabinet Manufacturers. There were in attendance W. P. Kelly, E. H. Ovenberg, Otto W. Sammet, W. C. O'Leary, D. H. Ryan, J. Hart, N. Edwards and myself. Cox came there a bit, and Lennon was in and out. Everyone who signed that agreement participated in the negotiations. Kelly, Ovenberg, Sammet and O'Leary represented Millmen's Unions 42 and 550; Ryan rep-

(Testimony of J. G. Ennes.)

resented Bay District Council of Carpenters; Lumber Products Association by J. Hart; East Bay Mill Owners Association by N. Edwards, Nat.

There were quite a number of problems taken up during the conversations; all of them were more or less interlocked. The principal demand was a demand for more wages and a demand for union conditions. "Union conditions" is an inclusive term, for instance, if you have a Union shop, that goes with it, it would be the use of the Union Label, and the use of the Union Label is a matter which the Unions usually insist upon on a union shop condition. The stamp itself is not controlling with the union, but they would object, they have objections to working on materials which fail to carry that stamp, that is material from other sources; also union conditions take into consideration the questions of safety and sanitation, the right of the men to work in other jobs, other shops that use non-union men.

They cover the matter of apprenticeship training as a movement of the craft.

Other things were considered and debated at the negotiations. The question of the apprentices. The apprentice is a source from which we ultimately get our journeymen mechanics and they arranged a ratio, which in this case happened to be [495] one apprentice to four journeymen. The unions took the position that the employers were using the apprentices for cheap labor; that we were not re-

(Testimony of J. G. Ennes.)

quiring the apprentices to work at the various parts of the craft or trade and that the using of so many apprentices was preventing journeymen from finding employment because the apprentices were doing the work. They claimed they had many men on the street and they wanted to modify that ratio. We finally agreed that we would, although not changing the contractual relation, we would modify certain abuses of which they complained and try them out and see if they wouldn't work out. We were able to hold the same ratio. They insisted that the employers cease to displace the employees that they claimed we were when we were working with the tools of the trade. We got that settled by agreement as to whether any employer could work with the tools of the trade without being an employee.

We have a very liberal interpretation of the hiring arrangement. We do not have a hiring hall directly. We can employ any man we see fit, and after we keep him in the service a certain length of time, he joins the Union. They took the position we were employing men who drifted in here, letting the old men available in the vicinity, wait around. That caused us to have what we claimed was the setup of a hiring hall. We insisted very strongly we didn't want a hiring hall, we wanted to be free with our own choice. We ended up by agreeing not to change the contract.

They also took the position there were many

(Testimony of J. G. Ennes.)

men in the shops that were old and couldn't do hard jobs, that we should select jobs they were capable of doing and keep those men employed. We countered with the proposition they couldn't turn out the work and we believed there should be a lower rate.

We finally got the question of millwright work adjusted, that is the work of actually adjusting the machines. [496]

An argument came up about shop stewards not being known to us, so we got it down into the permissive form. Then the question was when we were going to have arguments, how were we going to be able to get interpretations and set up a so-called conference committee. Then the question was about work in process while we were carrying on this argument or conflict. The employers had to know how to bid on work which was going to be coming up. We had an agreement on the work which was taken during this debate or conflict and the rate that was going to be paid.

Then in the matter of wages, that consumed considerable time because there was no real flat declaration of just how much they wanted. They kept comparing it to other crafts and other trades and comparable rates and bringing up all kinds of data to show that they were much abused, the rate was low, and hod carriers were getting so much and various other mechanics were getting this, that and

(Testimony of J. G. Ennes.)

the other thing, and we battled that back and forth, and then they announced a thought there that we hadn't had to deal with before. Before this, we had what was known as the American plan or open shop. They brought out the point that they wanted us to agree to use union-made materials. They argued that it was to our interest as much as it was to theirs, and in the final analysis if we didn't come to that mind, the first thing we would have, we were going to be faced in our own community with the CIO setup and then we would have it where they were working on a craft basis and the others were on a trade and they would be running all over the place doing this, that and the other, and we made an agreement we were going to use union goods. They put it flatly, if we didn't get [497] union-made material, and so forth, that they weren't going to work on it, that there was right here in the area material—we would bring it into our shops and we were. I don't think the word was "debauching," but it was about the same thing, we were doing a little bit of work on this material and, therefore, the material was gaining the stamp and these employees, the public had no idea that it was produced not under union conditions, whereas as a matter of fact it was produced under conditions which were not union conditions.

On the request of the Union that the employees; as a condition of employment, only work on union goods, I took the position on behalf of the cabinet

(Testimony of J. G. Ennes.)

manufacturers we would do nothing of the sort, we were going to maintain the conditions that had obtained to that time. There were many more words said, but that was the substance.

We maintained that position around two months we were working on the contract. We approached the matter that it was not feasible and it just couldn't be done. Mr. Sammet, a worker at Ostlund & Johnson, was the only member who was a cabinet man. I said to Mr. Sammet, "You know, as a practical man working in the trade and cabinet shops, you can't find any magnolium carrying a stamp that was produced by niggers down in the deep South, they don't know what the A. F. of L. means." I went on showing them it was impossible for us to be bound by any such arrangement.

It appeared to me that the Union was trying in one leap to gain more than they were entitled to:

Sometime after a 1917 contract turned up in the meeting and when I saw that contract I saw the list, and it was apparent to me at once, as a practical cabinet shop man, that that list was not expansive enough to take care of our requirements. I added certain items which I presumed would more or [498] less affect my own conditions. I added dowels, panel stock and stock panel, veneer, machine carved, pressed or embossed moldings.

I wrote the paragraph reading: "Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed

(Testimony of J. G. Ennes.)

state to any buyer. Nothing herein is to be interpreted as to in any way interfere with any business of the Federal Government, or that of an inter-state common carrier, or any regulations of the Federal Trade Commission, or the Sherman Anti-Trust Laws."

Every item of material that the Cabinet Manufacturers use is covered by the language, "Nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any Buyer."

At the time of entering into the contract we discussed about the cabinet manufacturers doing work for the Federal Government. I brought up the point we had bank jobs and I didn't know where things were going to come from, and I had to be in a position to serve any job, and also post offices.

I had discussion about the Interstate Commerce carriers. I stated that we handled a lot of work for railroads, restaurants, seats, and things of that kind, and we weren't going to be bound by anything like that. I told them I once had appeared as a witness before the Federal Trade Commission on whether Philippine mahogany was mahogany or not, and that the commission had a habit of shifting itself around, one day it was one thing and the next day it was another, and I wanted to be sure I didn't get caught on that end of it.

I had a discussion about the Anti-Trust laws. I pointed out we were going to enter into a contract

(Testimony of J. G. Ennes.)

whereby we were restrained from interfering with antitrust regulations.

In 1936 we finally arrived at the agreement that contained paragraph 16 that has been read in evidence. There is not a single article of lumber products used by a cabinet [499] manufacturer that is not contained on that excepted list and the additional sentence in the concluding paragraph.

The rates and wages on two types of journeymen millmen was fixed in this agreement. Cabinet men do not employ both types; they do employ the type other than the stock sash and door workers. The lower rate, fixed for them, 82½ cents. The higher rate of 92½ cents is fixed for the ones we employ. As I recall \$7.20 per diem was the rate of wage in existence before this contract was entered into, before it was 80 cents, so there was a dollar a day raise.

Terms of employment of the millmen of 550 and 42 were changed by the 1938 contract. During the period from 1936 to 1938 I never had an oral agreement of any kind, character or description with any labor officer or employee on the question of keeping any merchandise out of the City of San Francisco. From the period of the negotiations that led up to the agreement in 1936, until the return of the indictment in this case I never discussed with any union agent the matter of keeping out any material from the San Francisco Bay Area.

In the period from 1936 until the date of the re-

(Testimony of J. G. Ennes.)

turn of the indictment in this case there was no stoppage of anything coming into our shops. There was never a request made on me and any member of the Cabinet Manufacturers Institute to buy material from any particular person, firm or corporation by a union member. That subject was never discussed between me and those union men.

I know the general sources of the lumber materials used by members of the Institute during the period covered by the indictment. I know that certain soft wood comes from the Northwest, Redwood comes from California, and certain of the White pines from California; certain kinds of hardwood come from the South and certain kinds from the North. Mahogany comes [500] from outside the United States, Philippine mahogany from the Philippines, and vermillion from Brazil. In general with the hardwood grades we prefer the hardwood grades that do not come from the State of California. Oak is not sometimes identified as to where it comes from.

I know whether during the period covered by the indictment soft wood produced in the Northwest came into the cabinet shops in San Francisco. I know of no instance where there was any effort to stop the movement of any of this lumber either from the Northwest or the hardwood lumber that was going into the cabinet shops in San Francisco.

I received "U. S. Exhibit 61-48", or a communication identical with it.

(Testimony of J. G. Ennes.)

Thereupon such exhibit was read as follows:

"Mr. Faulkner: This is from the Bay Counties District Council of Carpenters. It is dated April 11, 1938, and is addressed to Mr. J. C. Ennes, Secretary, Cabinet Manufacturers Institute of California, Northern Division, Mr. F. S. Spencer, Chairman Lumber Products Association of San Francisco, Mr. D. N. Edwards, Chairman East Bay Mill Owners Association:

'Gentlemen:

'The agreement now in effect between your three associations and the Bay Counties District Council of Carpenters Millmen's Local Union 42 of San Francisco and Millmen's Local Union 550 of Alameda County, stipulates (paragraph 24) 'it shall be subject to change, modification, or termination by either party (after June 15, 1938), upon 60 days notice being served in writing upon the other party.'

'In accordance with the provisions we have quoted, you are hereby officially notified that the Bay Counties District Council of Carpenters, acting both for the District Council of Carpenters and for Millmen's Unions 42 and 550, all signatories to the [501] agreement, that it is our desire and request that certain changes be made in our agreement.

"We are making our request at this time so that we may have ample time to arrive at a mutually satisfactory adjustment of the present agreement before June 15, 1938.

(Testimony of J. G. Ennes.)

"May we respectfully suggest, in order to promote the establishment of conditions of employment in Santa Clara County and Contra Costa County identical to the conditions that may be established in the San Francisco Bay Counties, that you invite representatives of the employers in these two adjacent counties to participate in the conferences in the establishment of our new agreements. We are referring specifically to the Pacific Manufacturing Company of Santa Clara County and the Redwood Manufacturers Company of Pittsburg.

"We ask that our representatives be afforded an opportunity to meet with representatives of your organizations at your earliest convenience.

"Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS,

D. H. RYAN,

Secretary."

After the receipt of that communication I soon thereafter resumed negotiations with the Union men. That continued up to the time we put the thing into arbitration. The hours, wages and working conditions were specified in the instructions to the arbitration.

Judge Johnson was the neutral arbitrator and the representatives of the employers' side were Anderson and Hart, and on the employees' side, Ryan and Kelly.

(Testimony of J. G. Ennes.)

Certain portions of the dispute were negotiated and agreed to without arbitration. I was a signer of the agreement of July, 1938. In the 1938 negotiations W. P. Kelly, W. L. Wilcox, A. W. Edwards, W. P. O'Leary, E. H. Ovenberg and C. H. Irish represented 42 and 550; D. H. Ryan represented the [502] Council, Carl Warden and Hart represented Lumber Products Association, and I the Cabinet Manufacturers. Stair builders did not have a representative.

Matters that were referred to the arbitrator were the rate of wage, the hours and the effective date, as set forth in that letter. The remaining pages of the 1938 contract were negotiated.

I think there was a change in the holidays and other things were substantially the same. A majority of the provisions of the 1936 contract were carried into the 1938 contract and there was arbitration of the wage dispute. The negotiations were in the Auditorium in the Call Building. The men named participated, subsequent to the letter and prior to the arbitration.

There was a question raised as to taking materials and changing them, or working on them, and they said they did not mind the material being purchased and sold but they did not intend that they should be modified, thereby gaining the stamp. The Union said the items on the list not requiring any stamp were being taken by the employers and modified and they were not willing; they were not

(Testimony of J. G. Ennes.)

concerned as to the use, as long as they were not compelled to work on them. They merely stated it was being done, they did not state what employers did it.

That in substance was the extent of the negotiations over paragraphs 17 and 18, otherwise it was carried into the 1938 agreement in substantially the same form as in the 1936 agreement. I never appeared in the arbitration.

I am familiar with Paragraph 2 of the 1938 agreement, reading:

"It is the unanimous decision of this Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interest of the community [503] in aid of the maintenance of fair working conditions that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be working contrary to the conditions of said agreement."

In none of the negotiations or discussions of the terms of the 1938 contract did I discuss that paragraph in conjunction with paragraph 17. I know the facts substantially under which that provision came into the 1938 contract. I prepared the letter marked Defendant's "Exhibit J".

Thereupon Exhibit "J" was introduced in evidence and read as follows:

"It has on top "Lumber Products Conference of

(Testimony of J. G. Ennes.)

San Francisco, 441 Call Building, San Francisco.

July 12, 1938.

"To the Honorable, Walter Perry Johnson, 111 Sutter Street, San Francisco,

"Dear Sir:

"Messrs. Anderson, Hart, Ryan and Kelly have concurred in the following wording, subject to your approval, and ask that you be advised to that effect:

"It is the unanimous decision of this Arbitration Board that it would be to the best interests of the community that the parties to this agreement refuse to handle any material coming from any mill or cabinet shop that is working contrary to the conditions of this agreement."

"They await your pleasure.

"Very truly yours,

"LUMBER PRODUCTS CONFERENCE OF SAN FRANCISCO,

By J. G. ENNES,

Secretary."

"And in the left hand corner, Carbon Copy to Mr. Anderson, Mr. Hart, Mr. Ryan, and Mr. Kelly."

The title "Lumber Products Conference of San Francisco" means that at the time of the demand there were [504] a certain number of Associations which had been served with demand by organized labor and there were a number of non-members of trade associations who had likewise been served,

(Testimony of J. G. Ennes.)

and so as to face organized labor with a degree of solidarity we named a meeting by that name. In other words, there were certain trade associations, plus a number of so-called independent shops who were faced with the same issue that we were faced with. We set up that name saying we were going to handle our labor negotiations and made that quite clear to Judge Johnson in our memorandum, telling him who they were.

In the negotiations of 1938 I represented Cabinet Manufacturers. When I signed this agreement I was not employed by Lumber Products Conference, that was a voluntary act for my group. The letter was sent to Judge Johnson. I prepared it at the instance of the members that were seated on the Board, that is, Hart, Anderson, Ryan and Kelly. I did not participate in the arbitration matter at all by personal appearance before Judge Johnson.

Language similar to that of the letter of July 12th came into the agreement sometime in July, 1938. Subsequent to the agreement of 1938 the matter in that letter was a matter of dispute and argument in this community. Controversy broke out between the various parties as to who was going to be bound by the arbitration agreement. The Oakland group negotiated, but when it came to actually signing and committing themselves to be bound by the arbitration, they withdrew from the meeting and took the position that they were not going to subscribe to that arrangement.

(Testimony of J. G. Ennes.)

When I prepared the letter of July 12, as Secretary or scrivener, the members of the arbitration committee stated what they wanted contained in the paragraph I wrote. They stated they wanted to see to it that this area was on a uniform [505] basis. They stated what they meant by this area on a uniform basis in particular reference to causing Oakland to pay the same rates. The rate of wages in the 1936 agreement applied to four counties; everything under the jurisdiction of the Bay Counties District Council of Carpenters.

Lumber Products Association of San Francisco was a San Francisco group; East Bay Mill Owners Association were mills in Oakland and somewhere in Contra Costa County. The Mr. Edwards who signed for East Bay Mill Owners was the same who declared he would not be bound by the arbitration award that was pending before Judge Johnson.

It was common knowledge that the rate of wages at \$8.00 in the 1936 agreement was in existence in Oakland at the time Judge Johnson fixed the award at \$9.00 a day in San Francisco. I knew in 1938, at the time I prepared that letter, the wage scale under the contract signed by the East Bay Mill Owners was \$8.00 a day and that that was the amount of wage paid by the San Francisco employers of men belonging to those two unions. I did not know at that time what change was made as far as the San Francisco group was concerned

(Testimony of J. G. Ennes.)

by Judge Johnson's arbitration, it had not been made as far as I know. Immediately after there was a change made as to the wages of the San Francisco group by the arbitration to \$9.00. It applied to all employees of 42 and 550, and all employers who had been bound by the agreement.

The East Bay group were not parties to the arbitration which fixed the \$9.00 rate. At the time I prepared the letter Messrs. Hart, Ryan, Anderson and Kelly said they anticipated there was going to be trouble in bringing Oakland into line, and steps had to be taken to see that this thing was applicable throughout the area.

The paragraph I prepared in the letter of July 12, [506] brought the Alameda employers into line because 550 was bound to work for the same rate that was established by the Arbitration Board. Local 550 is in Oakland and Local 42 is in San Francisco, and both unions were bound by the arbitration agreement. Both 42 and 550 are employees of organizations belonging to Bay Counties District Council of Carpenters. They have always maintained a uniform scale throughout the area and were bound not to work for anything less than that minimum of \$9.00 a day. Mr. Edwards' members were paying \$8.00.

In San Francisco we made a token payment of \$9.00 and I then notified organized labor that unless Oakland was going to pay the same rate that we were going to break the scale and step back to

(Testimony of J. G. Ennes.)

\$8.00. We were holding \$1.00 and making out two checks, \$1.00 and \$8.00, and that developed a serious breach between us and the entire labor which was referred to the attention of the Associated General Contractors. They called a meeting of the B.T.E.A., to which my group belonged through me, and also the millmen of San Francisco belonged. They called a meeting, and in the meeting was Mr. Hart, myself, Mr. Hilp of Barrett & Hilp, who, I believe, was president of Associated General Contractors, and Mr. Ryan, I am not sure about Mr. Kelly.

This was not the meeting referred to in the direct examination of Mr. Hilp and Mr. Hague. This was a meeting of the Building Trades Employers Association. Hilp and Hague referred to a meeting of Associated General Contractors dealing with the same subject matter. This meeting was the Building Trade Employers Association, the group that Mr. McNally was called as a witness about and identified a lot of minutes. This was a meeting of the A.G.C., the big contractors, and the Associated Home Builders who take care of all the F.H.A. work, meeting with labor present.

I recall a meeting occurred about July 25, 1938. I recall saying at that meeting, "We believe the arbitration has [507] been made and the wage must be lived up to." I recall making the statement, "San Francisco does not differ from Oakland materially and we favor arbitration; we don't want to 'hit the streets.'"

(Testimony of J. G. Ennes.)

I pointed out it was impossible for us to pay a rate different from Oakland and we were probably going to have a problem unless the provisions there which labor had entered into were lived up to, unless they maintained that rate and we didn't want to see the men hit the streets, but we certainly weren't going to be put in a position of paying a rate higher than Oakland. That was the general subject matter discussed with the General Contractors and labor men in that meeting, and is the reason the meeting was called.

Thereupon three pages of notes, from which Mr. Faulkner read, were marked "Defendant's Exhibit K" for identification.

It was thereupon stipulated, that in the rough minutes that Mr. Hague made, the following are the only notes in which Mr. Ennes appears: "We believe the arbitration has been made and the wage must be lived up to." "San Francisco does not differ from Oakland materially, and we favor arbitration. We don't want to 'hit the streets'".

"Mr. Howland: If your Honor please, if I may interrupt at this time, in connection with the application made to your Honor this morning I wish to offer in evidence now the record of transcript of the proceedings that were had before the Grand Jury in connection with these three witnesses, Mr. Helbing, Mr. O'Leary [508] and Mr. Ryan, and separately what is part of these proceedings the statement made by those three defendants relative

to their testimony and their immunity, and, third, the transcript of proceedings taken on the motion to quash subpoenas, and with reference to the presentment of these witnesses to your Honor and their direction to testify, a copy of which was handed your Honor this morning. We wish to make that offer in evidence so that it will be before your Honor.

“Mr. Burdell: We would object to that. We have no objection to your Honor’s consideration or the introduction in evidence for that matter of the proceedings taken before your Honor with reference to the question of contumacy of the witnesses, but we would certainly object to the production in evidence or the production in any way of the transcript of the proceedings before the Grand Jury. Our objection, of course, would be based upon the traditional ground with reference to the secrecy of the Grand Jury, also upon the ground that your Honor should not be required to examine that transcript to determine this question, but that the question should be determined in the ordinary way, that is, in a separate proceeding, and that counsel should be required to make that showing in the proper plea.

“Mr. Howard: That is why we are making this presentment, we are presenting it to your Honor.

“The Court: It has been passed on once.

“Mr. Howard: It was in connection with a plea, but we are offering this under this presentment

from the standpoint of evidence as well as our plea. If there is any question of secrecy we are not seeking to look at the transcript, we are offering it to your Honor.

"The Court: Yes.

"Mr. Burdell: It seems to me that is a question of fact that Mr. Howard is raising here, when as a matter of fact there [509] is no question of fact, and no question of fact raised by any plea of any sort. The only plea on file is a plea to which the demurrer has been sustained.

"Mr. Howard: It is understood that we are proving and presenting it to your Honor.

"The Court: I will reserve my ruling on that. You may proceed."

J. G. ENNES

testimony resumed.

The cabinet men were members of the Building Trades Employers' Association. The 1938 arbitration and agreement was a subject discussed by the Building Trades Employers' Association.

The matter of the situation presented by a \$9.00 award to the Millmen's Union of San Francisco as distinguished from an \$8.00 rate of pay in Oakland was discussed before the Building Trades Employers' Association. I am a member of that Association. It is composed of the various elements of the employer trades associations and various elements of the employee associations whose objectives

(Testimony of J. G. Ennes.)

were to maintain industrial peace within the construction industry. It is a voluntary organization. [510]

"U. S. Exhibit No. 161" is a letter of mine addressed to the Building Trade Employers' Association. The meeting to which I referred followed that letter. In the letter I call attention, representing the Cabinet Manufacturers Institute of California, to the subject matter of the arbitration award of 1938, and particularly to the provision that it was the unanimous decision of the Arbitration Board that the new agreement should include a provision to the effect that it is deemed to be for the best interests of the community and in the aid of the maintenance of fair working conditions that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be working contrary to the conditions of said agreement.

My understanding is that the meeting came about pursuant to that letter. Mr. Hilp of Hilp & Barrett, was the General Contractors' representative at that meeting, and also as a witness here. Mr. Bernhart represented Associated Home Builders, and the other people that take care of F. H. A. projects were there. I was there, and Messrs. Hart, Ryan, Watchman, Ricketts and Supervisor Dewey Meade. Mr. Hilp said he called the meeting because the position taken by the mill owners and the cabinet own-

(Testimony of J. G. Ennes.)

ers organizing to break the rate would no doubt bring about a disastrous condition in the community and they wished to avert that, and was sure something could be done. We maintained our position we could not pay \$9.00 on this side and have Oakland pay \$8.00, and then have the general contractors go over there for materials and the mill owners go for their materials to Oakland, and having the customers go to Oakland where they could get it cheaper. Mr. Bernhart probably turned the tide; he pointed out that they had a lot of F. H. A. houses partially built and if there was a strike in San Francisco considerable damage was going to be done to the reputation of the industry [511] and to these people, who had leased their rent or place of occupancy because they would have a double burden by paying on both ends at the same time, and so far as he was concerned he was going to give us a breathing spell, and any place in which he was doing business he was going to continue doing business even though he recognized it was going to involve additional expense, that he was going to absorb it. Mr. Hilp concurred. Then Mr. Ryan expressed himself that if a reasonable opportunity be given he thought they could straighten that question out. I asked him what he meant by "reasonable opportunity", what do you mean in time? And he designated a time, and it was too long in our opinion. We then suggested if he would name a time we would then escrow the \$1.00, and then proposed a committee of three but the escrow did not

(Testimony of J. G. Ennes.)

work out, and eventually I put the proposition this way to Mr. Ryan, I said, "All right, under this contract, we have lived up to it, we have paid \$9, and we have done everything we know what to do, if there is anything going to be broken, I am not going to have you say to me that I broke the rate." He made that reference before in connection with the breaking of the rate that I will have to admit, it was in connection with the Industrial Association, we did break the rate, and he had referred to that, and I said to keep in the clear you are going to put something on the dotted line, and I prepared then a rough letter in which I said in substance, I do not think I have heard it here, but it said in substance that unless the matter was taken care of in paragraph 19 after such and such a date that that would be evidence of their breach of the contract. I signed it then and there, and as I recall Mr. Hart either signed it or initialed it, and Mr. Ryan signed his initials, and we went out from there and everybody felt that we had the solution of the problem.

This situation involved both cabinet men and the [512] mills because we both operated on both sides of the Bay. Some merchants have business on both sides, also our men work on both sides. We had men that worked in San Francisco and belonged on the Oakland side. These locals in the Bay Area work in harmony as to exchange.

The general contractors purchased material from the Cabinet manufacturers very seldom. We usually fabricate our own and installed it; where they usu-

(Testimony of J. G. Ennes.)

ally did the installing and did not fabricate. If they needed something they would come to us, but not much.

The cabinet manufacturers were tied into this matter of the Millmen's Union with operators of planing mills, because in this particular city there is no distinction in the union position between its employees which work in the cabinet shop and those who work in the mills. Anything that might affect 42 or 550, faces the same labor situation.

I think an intelligent estimate of the members of two unions, 42 and 550, employed by the cabinet industry, as distinguished from millwork industry, would be about 15 per cent. I have not actually placed the figures together.

In July of 1938, when these matters were in progress, labor was still employed in Oakland on the \$8.00 rate, in San Francisco we were paying \$9.00 to the men, but we had \$1.00 paid to them endorsed back to us, we still had our hand on it, intending to keep it, unless the rates were adjusted properly.

Soon after this letter went out and the date arrived which we specified, a strike occurred in Oakland. Later, after the arbitration award and agreement, and this discussion with the general contractors, an agreement was reached fixing a wage scale other than \$9.00.

"U. S. Exhibit No. 175" is an agreement which adjusted the wages from \$9.00 down to \$8.50. Mr. Edwards stated that he would enter into such an agreement, and to common [513] knowledge they

(Testimony of J. G. Ennes.)

were paying the same rate, \$8.50, at that time. Effective October 18, the rate was reduced to \$8.50 in the six counties, one was reduced, the others were raised. \$8.50 a day was the rate that was paid after that agreement had been arrived at. The Oakland — The Transbay group likewise paid \$8.50 and the strike was lifted.

We did not renegotiate all of the paragraphs of the 1936 agreement in 1938. All the paragraphs were not reenacted exactly in the original form, there were slight changes here and there. The discussions were mild up to the point where we got to settling the rate and then I would say they were rather hectic.

I don't recall any other meeting subsequent to the agreement effective October 18, when representatives of the employers, that is the Cabinet Manufacturers and Lumber Products Association, met with members of the Union in 1938.

I signed the letter which is Exhibit 133 in evidence. This letter was a check-up that I wrote to see whether in fact that agreement was an agreement. There was some question as to whether or not organized labor had done certain things in connection with ratification of this. I was writing the letter asking for confirmation. The purpose of the letter was to confirm both of the contracts, being Exhibits 175 and 132. I got an answer to the letter in writing; I don't know where it is. It was rather garbled, in my opinion, my expressed opinion.

Thereupon Exhibit 133 was read as follows:

"This letter is on the letterhead of the Cabinet

(Testimony of J. G. Ennes.)

Manufacturers Institute to the United Brotherhood of Carpenters and Joiners of America, Union No. 42:

'Gentlemen:

"Our shops are operated under the terms of a negotiated and arbitrated Agreement which Agreement was subsequently modified at the suggestion of your International Officers, your [514] local representatives being present, and concurred in by us in the following language:' — Then comes language purported to be taken from Exhibit No. 175 which we have read in evidence and it quotes the language of Exhibit 175 and the letter then goes on to say:

'In spite of the affixed signatures and statements of those who asserted and we believed to represent you, we have heard that there exists some question as to Organized Labor having followed the proper procedure with respect to the contracts.

"We are hopeful that the long established confidence we have in your organization and its officers will continue to obtain. So there can be no misunderstanding arise, please advise us in the premises.

Very truly yours,

CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA INC., NORTHERN DI-
VISION

By J. G. ENNES, Manager.

LUMBER PRODUCTS ASSO-
CIATION INC.

By H. W. GAETJEN."

(Testimony of J. G. Ennes.)

In 1938 there was not any oral agreement ever entered into by me on behalf of my Association of any kind, character or description with any representative of Organized Labor, concerning the keeping out of any materials used by the cabinet industry of any shape, manner or form. I was not connected with any oral agreement of any kind, with any mill owner in which there was an agreement to keep out any material moving in Interstate Commerce or in any other manner in this district.

In the year 1938 I recall where a representative of Union Labor was auditing or checking the accounts of the Cabinet Manufacturers Institute with respect to the application of a wage scale change of jobs on hand. I wouldn't say how long that checking continued. [515]

"U. S. Exhibit 11-1" is a letter addressed to Millmen's Union No. 42; that is my signature. I did not prepare it but I signed it. (Request for additional Business Agent). I joined in the request for another Business Agent or having a sufficiency of Business agents.

There were two problems which the Cabinet Manufacturers referred to. One problem was that there was a breakdown of the rate of wage. The other problem was the chiseling on the adjustment made between old work and new work.

In the case of chiseling I am afraid it was the employers doing it. In the case of breaking down the rate, I would say it was a kind of joint affair,

(Testimony of J. G. Ennes.)

the employers and the unions. In the 1936 agreement, unfortunately a serious problem came up which also was to the discredit of the employers. It developed some very harsh talk in the negotiations. In that case we had labor handing back sums of money as an adjustment, and that was the reasonable way to do it, and I knew that unless we got the thing straightened out it was going to come up at our next negotiations, so I wanted to take care of it at its source and to get something straightened out to take care of it before it got worse. The business agents would do that; they would usually go right into the place and check it on pay day, or something of that sort, catch either side that tries to get off.

I mean by chiseling on the rates when times are slack and men are hungry for work, arrangements are made between employers and employees to do work for a lesser rate. Employees that have been there a long time sometimes make those little adjustments on the side, but if one firm finds out the other is getting away with it that means a kind of caving in of the whole system.

In December, 1938, the 12 members of the Cabinet [516] Manufacturers Institute were not the only people engaged in the cabinet manufacturing business in San Francisco. I would say, taking the phone book as an index, there were probably as many as forty; I don't know for a fact that they all had the identical contract that my group had.

(Testimony of J. G. Ennes.)

The Business Agents of the Unions made the statement that some of the forty other cabinet makers in this community had the identical contracts that had been introduced in evidence, in which the Cabinet Manufacturers Institute is a party.

As far as the cabinet manufacturers were concerned, they were the members of my own group and had additional men all operating and participating in the same wage rate. I presume the Business Agents would check everybody in the cabinet industry because the rates are uniform for everybody working for 42 and 550, that includes all of the planing mills here; their rates likewise are the same. They were being chiseled on and that is why I wanted the Business Agents to go in there.

Exhibit 146, signed Employer-Employees B. C. W. P. Labor Conference Committee means Employer-Employees Bay Counties Wood Products Labor Conference Committee.

That is a copy, but I do know I signed that letter. I do not know whether the paper I signed was on the letterhead of the Bay Counties District Council of Carpenters. I did sign a letter which the Government has introduced here substantially the same as this one.

The facts surrounding the signing of a communication of that nature were that Nat Edwards of Oakland called up and wanted a meeting of this Conference Board, which was what we would call a beef committee in the industry. If we had any

(Testimony of J. G. Ennes.)

trouble we would take it there and they would wash it out. It is a conference committee of both employers and union members. It is set up in the contract. He asked whether it would be [517] convenient to meet in the office and I said sure. They then got down to the discussion on that word "T & G". That is understood for tongue and groove, and he had some idea that they ought to be more clearly defined, and he then roughed out the definition of what he thought it ought to be, with the Vs and beads and all that, profiles and so forth. I drafted it up and got it wrong the first time. I was acting as Secretary for the meeting. I revamped it at his suggestion and then we sent that to both parties, so all people having a contract could be advised of the definition of that term "T & G". At the time I was sitting in the meeting I was representative of Cabinet Manufacturers Institute; I was acting secretary of the meeting.

The cabinet men use flooring in small quantities; sometimes they bring it in in carload lots and sometimes they need a small quantity and buy it from the local vendor. Cabinet men use T & G, sometimes bring it in in carload lots and sometimes for small quantities get it from the local vendor.

There was not any instance where a question ever arose as to the right of cabinet men to bring in either flooring or T & G from any source or any place that they desired. There was not ever a discussion in the entire time I was carrying on these

(Testimony of J. G. Ennes.)

negotiations for the cabinet men with any union representative about bringing in any lumber material outside the State of California, or outside the Bay Area into this Bay Area for cabinet manufacturers. There was never a request to me that the cabinet men buy their lumber material from any particular firm or corporation. The only thing that might approach that is the one time certain hardwood merchants indicated they wanted certain business; there is a letter to that effect. They were local people and wanted to get business from the members. The hardwood these men handled came from outside the State. That was a matter of one group getting business from [518] another. Probably some of the Oak which grows in California came from inside the State, but in general the hardwood purchased by the Cabinet Manufacturers Institute comes from outside the State because it isn't a hardwood state. I never received a request from any Union Official of any kind that the members of my group buy only products from a local San Francisco planing mill or Oakland planing mill or planing mill operating in the San Francisco Bay Area.

In 1939 I participated in the negotiations leading up to the contract No. 69, in evidence, dated August 10, 1939. None of the cabinet manufacturers attended any of the meetings with Organized Labor held in 1936, 1938 and the one in 1939. No one representing Mullen Manufacturing Company appeared at any of the negotiations that I refer to

(Testimony of J. G. Ennes.)

with organized labor; that was taken care of by me. That is also my answer with reference to Ostlund & Johnson, L. & E. Emanuel Company, the Unit-Bilt Company, Fink & Schindler, Braas & Kuhn and Mangrum, Holbrook & Elkus.

After the negotiations were reduced to writing I did not send the contracts to the members of my Institute. I never had any contract mimeographed to distribute to my members. I did advise my members concerning the fact I had entered into a contract with Organized Labor from time to time. During the progress of the negotiations I would call them up from time to time and inform them whatever the rate of wages probably was going to be and warn them to adjust their bidding so they would not get caught on the short end. I mean by that, that if the rate of pay was \$8.00, and my guess would be maybe labor was going to go up or get away with \$8.50, I would inform them they better start bidding at \$8.50 because although we had that clause which was supposed to adjust that, sometimes it didn't just work out that way, so it was by way of keeping them advised. As a matter of fact, I am doing that right now. [519]

We are under arbitration and I try to guess what the arbitrator is going to do. Then upon completion of the contract I would call them up and if there was some change, like additional holidays given, I would inform them of that, what the wages were, what the hours were and the apprenticeship scale. That is as far as I went with them.

(Testimony of J. G. Ennes.)

In 1939 I participated in negotiations for that contract. We were able to hold it to the same rate, \$8.50. The lower rate was in proportion, $96\frac{1}{4}$, that is the mill rate, that don't belong to us.

I know Mr. Strong. Some of those shops in question that he mentioned I don't think I did go, but in general I went to the shops he said I went to. I did not go in 1938. The arrangement was in 1938, if anything developed that was not to the satisfaction of those concerned, to give me a call and I would go out and help the matter along. There were differences of opinion between himself and my people, but we eventually arrived at a mutual understanding of any differences that existed. For instance, if the employers would claim a certain number of man-hours and they couldn't support it, labor would take the position it was not supported and they wanted to adjust it downward.

The employer had a contract in existence at the time the wage rate was changed. He was to get a credit for having bid at an old rate and when the problem of estimating the duration of how long it would take came up, that is where the difference came in. The manufacturer would naturally tend to make the estimate longer and the employee the estimate shorter. Mr. Strong audited them and then they came to an agreement.

I met Mr. Wine sometime in the year 1940, a little before a letter was written at his request; I could fix the date by that. The letter of [520] April 10 was written in response to Mr. Wine's request.

(Testimony of J. G. Ennes.)

"A. Mr. Wine made first a call on the phone, asking to fix a date, and that date was not satisfactory, and later we fixed a date; when I got there I was late. I went in and Mr. Wine introduced himself and showed me his credentials, and I said I would take his word for it, and he then told me the Bureau of Investigation was carrying on an investigation that they thought was going to be very helpful to the construction industry, and he understood that I had some matters that I was attending to in the industry, and I was getting around a lot of places, and it would be very helpful if I would tell him about it; he then explained what his mission was, was to find out about certain material held up, and things of that kind. I told him that I did not know of any material that was held up, except by hearsay and rumors, and things of that kind, and I did not think that would be very good testimony, and I then asked him if he had any experience in the construction industry, and he told me no, he had not had any experience on the construction industry. I asked him if the F. B. I. men were not classified according to some previous training on various lines, and he said they were classified along legal lines, and auditors, and things like that, he made it quite plain. Eventually he referred to the contract, which he had with him, and he asked me if I would explain the contract, and I told him that I had not read the contract at all, and he said, "Mr. Ennes, you signed this contract." And I said, "That is my name, but

(Testimony of J. G. Ennes.)

that is not my signature." "Well," he said, "haven't you signed some contracts?" And I said, "Yes, I have signed many times." And he said, "Let me see something that you have signed." And I said, "Well, if you will specify what one you want to see, I will." And he said, "I want to see the Mill Owners contract, and I said, "I have not got a mill contract, I have got a contract [521] with the Millmen 42 and 550," and I went over—we had been sitting at a table, and I went over to the desk and got the contract, and laid it in front of him, and then he interrogated me as to certain paragraphs in there. I said as far as the cabinet work was concerned that did not mean anything, and he said, "If you should tell them that, you are an intelligent man, you are with intelligent people, what would they say?" I said, "If I told them that they would think that was all right, I am the person that is supposed to take care of the labor situation and they do not mess around with that, they just have to sell them, and do them, and collect for it; anything as to labor, I take care of that." And he smiled and said, "You are not a very helpful witness." And I said, "Why?" And then we both swung off on the wrong track, and we went through some small talk, and then he swung back to it a little later on, and I told him I did not know anything about it, again, "I am not going to talk on a subject, I am not going to talk about it," and we then moved over again, and finally it got around to

(Testimony of J. G. Ennes.)

a point where he made a sketch, and he sketched in there a circle of the F. B. I. and various departments, and I said, jokingly, "You do not have to carry a gun, do you?" And he said, "No, we only carry those where they are known violent criminals," and got off on another track, and he eventually said to me, "Of course, Mr. Ennes, I thought you would be very helpful, and you know you can be subpoenaed." And I said, "Yes, I know that, and whenever the Judge sends for me I will come trotting," and then he started off and talked about everything else but what I was supposed to talk about, so eventually he got up and said, "Well, Mr. Ennes, when you get a chance drop down to my office," and I said, "I am not coming down there, don't wait for me."

What I really think was he got off to a false start. I think he was trying to question me about something [522] I was not interested in. He did not seem to get where I stood in the picture. At no time in the conversation did I talk to him about any stoppage of lumber in the industry I represented. There was not any stoppage, he couldn't talk about it. He didn't ask the viewpoint of the cabinet manufacturers beyond referring to that paragraph, unless that is to be so construed. When I told him that mean nothing to my group I don't know what he thought. What he said was, "What would your people say if you told that to them, you are an intelligent man, and they are intelligent men."

(Testimony of J. G. Ennes.)

At the time I brought out the contract that had my signature on it, and that is here in evidence, I didn't tell Mr. Wine that I had never read the contract I produced for him. The contract I said I had not read was the one that he had there. It was in connection with that contract that I had that I told him that a particular paragraph meant nothing as far as my people were concerned.

It is correct that with the subject matter of an inquiry of about whether I knew about stoppage of material I told him I knew it by hearsay and rumor. He did go back to the same subject, referred to something I had told him about that I did not know anything about it. I was subpoenaed before the Grand Jury and testified there. I did not claim immunity.

I had a little flare-up or lack of meeting of the minds with Mr. Wine on the matter of taking notes of what happened there. When he came in he asked my name and things of that nature, and started to put it down. When I saw I was not going to get along too well, I said, "If there are going to be notes taken there should be a stenographer to take them," and I went over to the desk to the telephone and he said something pleasant, he did not seem to bother any more, and when he went to leave, he said "You understand there is nothing personal about it," and I said, "You have got a job and got to do it," and I thought he left quite friendly. He did not tell me at [523] any time that he was investi-

(Testimony of J. G. Ennes.)

gating me and anything that I said might be used against me.

"The Court: Mr. Howard, did I understand you to say this morning that you wished me to file these pleas?

"Mr. Howard: No, I handed them merely for your Honor's information.

"The Court: You have filed the originals?

"Mr. Howard: The originals are on file.

"The Court: You wish to introduce these in evidence?

"Mr. Howard: Yes.

"The Court: That may be introduced in evidence at this time.

"Mr. Howard: Together with the Grand Jury proceedings?

"The Court: No, I am not making any ruling on that.

"Mr. Howard: I understand that, that was our application.

"The Court: If you will just mark that and return it to me.

"Mr. Routzohn: May I have it understood that if the Grand Jury proceedings are not admitted we may introduce oral testimony as to what was testified to?

"The Court: No, I could not give you an understanding as to that now. [524]

"Mr. Routzohn: Will your Honor give us the opportunity to properly present it?

(Testimony of J. G. Ennes.)

"The Court: I will notify you later on."

The group of men consisting of employers' representatives and union representatives, was, I think, set up in the 1938 agreement. I would have to look at it. That group met twice in the entire period. The particular conference group meetings where labor and the employer were both represented only met twice. I refer to one meeting when you handed me that exhibit on T & G. I recall the other. I could not fix the date, but the subject was the matter of the rate and its application. We did not have a formal meeting, it was not the meeting that Mr. Hilp mentioned. The only two joint meetings that the employers participated in were these two that I have referred to.

Cross-Examination

By Mr. Clark:

The first Association I was connected with was Cabinet Manufacturers Institute, Northern California, it was not a corporation. I came with it in 1933. I stayed with it right on through until the incorporation of Commercial Store Front and Fixture Institute. In the 1936 negotiations I was representing the Association and its members. When I was there [525] on that occasion I was representing L. & E. Emanuel, Fink & Schindler Company, Braas & Kuhn Company, Ostlund & Johnson—that is Mr. Oscar Ostlund, and the Mullen Manufacturing Company. Mr. Roselyn was not in the 1936

(Testimony of J. G. Ennes.)

arrangement, I am sure; and if my memory serves me Mangrum, Holbrook & Elkus were not in 1936.

There was not any formal agreement with the members relative to my duties and just what the Association was supposed to do. There were no By-Laws and no Constitution. I was supposed to—I don't know if they even said that to me, but what I did was I took care of all the labor negotiations, I took care of the matter of ordinances, and things of that kind, in the City Hall, I attended various meetings of the Chamber of Commerce and things of that kind; I appeared at the Safety Council meetings. I was representing each one of them on any matter involving labor. I made an estimate here on the stand, there were forty cabinet shops here in San Francisco. There are cabinet shops outside of San Francisco, in California, and outside of the State of California.

Negotiations in 1936 were begun by a letter that came from Ryan on behalf of 42 and 550. I don't know where it is, I had it, I probably destroyed it; I don't think probably, if I did have it I did destroy it. Exhibit 108 is one letter, I sent out. I don't know that I have a carbon; I don't know what I did with that carbon. I have not got Exhibit 11-1. I have not a carbon. When I shifted from one organization to the other I cleaned the records out. I don't know where Exhibit 108 is, I have not got it. I don't know whether I produced Exhibit 11-1, I produced a number of papers. That is my signa-

(Testimony of J. G. Ennes.)

ture on the letter to Millmen's Union about putting on more business agents; I don't have a copy in my file. I did not take the trouble of signing a copy in my own files. When I first came there and took over I destroyed everything at that [526] time, back in 1933. Then I moved from the top floor down below and went in the closet and cleaned up then; then I moved to another office and I destroyed the stuff there. When I shifted from one organization to the other I cleaned it out again. The arrangement with the building was when somebody wanted to come into the room they would move me to some other office, and I took that occasion to dump these out. Every time when they piled up I dumped them out. I am in the office by myself but I have a closet and a file. From time to time when it piled up I just dumped everything out. If it was current I would leave it there, if it was not, I would dump it out.

In jumping from the old organization to the new, the corporation, the members in one were also members in the other. I performed the same duties with the new one as I did in the old, I had the same salary and the same office, except in one case I had no by-laws and constitution and in the other I did have; but for all practical purposes I did for one what I did for the other. It is correct that I kept the bank account of the old Association for over a year after the new one was incorporated, it overlapped. The new corporation used that bank account.

(Testimony of J. G. Ennes.)

Mr. Ostlund of Ostlund & Johnson was treasurer of the old group and of the new. He signed all the checks. Any expense that arose, arose on account of my making it, and I okehed them, and when they would come in they were paid.

Mr. Ostlund was a figurehead. I do not mean any reflection, I mean to say that I did not have a signature of withdrawal, but outside of that whatever I said went. He signed the checks upon my okeh; I would approve a bill and he would pay it.

I dealt with Mr. John Mullen in the Mullen Manufacturing Company in 1936. I reported to him as I have just [527] testified. It was not always a telephone conversation. If I went to the plant I talked to him, if I did not go to the plant I talked to him over the telephone. I don't remember of ever writing him a letter at all.

I dealt with Mr. Ostlund in 1936. I reported my progress to him or I would talk with the bookkeeper if Mr. Ostlund was not there. I would tell him what I had to say, depending upon what I thought the importance of the matter; if it was important I would talk with Mr. Ostlund. I don't recall sending any letters or copies of the contract to him at that time. I did not have any mimeographed copies of the contract prepared, I think the union prepared them. I have some of those. I did not distribute them or take them out, or mail them.

I talked to Mr. Emanuel in 1936, but very seldom; I talked to Mr. McRae. I also talked to Mr.

(Testimony of J. G. Ennes.)

Emanuel on occasions, I would report to him just as I reported to the others.

I dealt with Mr. Stauffacher of Fink & Schindler, or if he was not there I talked with Mr. Munk, an associate of his. I had the same dealings, type of conversation with them. I talked usually to Mr. Kuhn of Braas & Kuhn. I do not recall making any written reports to them at all. I have no records of the old organization.

Exhibit No. 60-7, January 21, 1939, is subsequent to the organization of the corporation. I will furnish a carbon of that letter if I have it. The same for Exhibit No. 60-9. I would not have a copy of Exhibit No. 60-40, it is not mine. I don't know where Exhibit J came from. I could not identify it as a paper coming out of my file.

I remember there was a joint conference committee in 1936. I participated in it. I think Mr. Hart, Mr. Nat Edwards and myself represented the employers. On the other side Mr. Ryan and whoever was the business agent at that time. [528] We had no regular meeting at all. As far as the conference committee was concerned it only met twice. I acted as secretary, there were no minutes and I never kept any record.

In the 1936 negotiations I represented all of the companies but Mangrum, Holbrook and Elkus and S. Kulcher. At the meeting in 1936, were present, representing 42 and 550: W. P. Kelly, Emil Ovenberg, Otto M. Sammet, W. C. O'Leary. Repre-

(Testimony of J. G. Ennes.)

senting the District Council, D. H. Ryan; Lumber Products, J. A. Hart; East Bay Mill Owners, Nat Edwards, and I represented the Cabinet Manufacturers. I don't recall who else were at the meetings. At some of those meetings they would move in and move out. I know Mr. Carl Warden. I don't think he was in the 1936 agreement at all. Mr. Cox was there.

I wouldn't say organized labor had a lead man. They would talk and then they would have differences of opinion and Mr. Ryan was there representing the Council, then these other men, not all but some working with the tools of the trade, and as things of that nature came up, they would get in and talk about them. The meetings were held in an auditorium at the Call Building. I arranged the place for the meetings. Later on sometimes Mr. Gaetjen arranged them and sometimes I arranged them. I arranged the 1936 meetings. When I say I arranged it at times, I don't know whether that is a fact, but I assume I did.

There was no lead-off man for the employers because they could hardly agree among themselves. In connection with voting, they took the position that even though everybody should vote, that anyone would hold it off if they wouldn't vote. The employers were autonomous.

No one was there representing the Cabinet Manufacturers group that I represented in 1936; there was in 1935. I don't recall that any of the

(Testimony of J. G. Ennes.)

cabinet group that I represented had anything to [529] do with negotiations in 1936; I would say No, as my memory serves me. I was there, I remember other details. No one else connected with the cabinet group I represented was present or had anything to do with the negotiations in 1936.

We won our point about apprentices and the hiring hall. Labor, in approaching the labor rate, never comes right out and says this, that or the other. It takes them a long time before they work around to some rate or wage. They usually proceed by comparing it to other rates of wages. They eventually get around and say, "All right, so much money". As I remember that was true in 1936. The rate of wage was the most important subject discussed at these meetings. Offhand I don't remember some of the old rates unless I saw the contract. It was the most important thing discussed, but once settled, it is of no importance to me then.

There was discussion there about all material. There was discussion about Northern material coming in. Both sides, unions and employers talked about that. The discussion was as to our ability to produce certain commodities and comparisons of prices and things of that kind. The effect on the market of the northern material was talked about, and so forth. They weren't going to do anything about it. I am sure we were going to do nothing about northern material. There would be discussions on the subject of the Northern Material and

(Testimony of J. G. Ennes.)

we came to the conclusions that are set forth in the contract.

What was said on that was the effect of inflowing material in this area from every direction. For instance, it was brought to our attention that this area itself was not unionized, was not organized, and old materials were flowing into our shops, that is the mills principally, and in those places we were making it possible to degrade materials by putting the stamp on them after having done about ten cents' [530] worth of work and the idea that they tried to put over there, I think, was to try to say that people in this area ought not to take from some other shop which had a non-union condition their material and degrade it. The stamp is the thing with them, degrade the stamp. We took the opposite position.

What was happening was, material was placed in a union shop. Material produced under this so-called unfair condition in this area; it came from shops in this area. For instance, say you gave a shop that produces some legs under unfair conditions. Those legs would be attached to a table top in a further shop. They would put the label on the whole thing regardless of the fact that the other items were produced under unfair conditions. The unions made the argument we were taking an item, merging it, mixing it, or something else, and then putting it on the market as if it were the product of a union outfit and the effect being that

(Testimony of J. G. Ennes.)

it was detrimental to their interest. They wanted us to stop it.

The exempt list permits the placing of that item between shops or any other place. The cabinet manufacturers don't buy from shops.

"Q. Why did you write the exempt list, then?

"A. I wrote the exempt list, the items on there, because they came from the hands of others and might be designated by the unions as being, maybe, not fair, and so forth.

"Q. From whom?

"A. From shops, from cabinet shops.

"Q. You say they don't use it.

"A. May I have the question?

"Q. I just asked you if your shops, the cabinet shops, don't buy from shops located here.

"A. No, we don't."

Representing the cabinet shops I wrote an exempt list because I wanted to be absolutely certain that in any eventuality, whatever happened, that we were going to be absolutely in the clear and nothing in any way, shape or manner could tie us up. [531] It was the argument, as I understand it on the part of the unions, that it was merely to keep one place from buying from another one here.

In San Francisco one place was manufacturing dowels in 1936; Pacific Manufacturing Company. I don't know any other shop manufacturing dowels. Dowels are on the top of our [532] list. Pacific Manufacturing Company produced panel

(Testimony of J. G. Ennes.)

stock, I believe in 1936. Pacific Manufacturing Company manufactures plywood panels, a veneer, and did in 1936.

I put them in there, as I stated before, to meet any eventuality that would come up, just like I have heard in this Court room many interpretations and I wasn't going to get caught in the clinches. I put it in there to cover this, but I also had in mind it was going to cover any eventuality. I just said I put it in there because the Union was objecting to our shop and other shops buying from non-union places.

That exempt list arose from a condition of 1917, a typical mill situation, mill contract, and I saw it and looked it over and they would think we were trying to put the community back in the shape of 1917, so I added the other items because they were peculiar to my industry. I don't know where the 1917 contract is, it never was in my possession. I had that and added to it the items that were peculiar to our own interests. They were dowels, stock panels, panel stock, embossed moldings, pressed moldings, lumber surfaced and rough, stock doors.

One-panel is a door. It says mahogany, pine, redwood and Philippine mahogany. We use flooring a little. It was manufactured in this community for fourteen or fifteen years before 1936. Siding and clapboard was manufactured then and now. We don't use any sliding. We use a small

(Testimony of J. G. Ennes.)

quantity of T & G. We use very little sheathing. We make up very little flooring, we use very few windows, veneers. Everyone I called off, with the exception of siding and clapboard, I said very few, are the ones we are interested in. I added to the 1917 list. The 1917 list was substantially what you saw on there, minus those top items, dowels, panel stock. Machine-carved, pressed or embossed moldings are not manufactured. I put them on because I explained that in [533] case of any eventuality whatever I wouldn't be caught. Here you are dealing with a group of men who might change their minds. I didn't have any intention of having anything of such kind happen to me.

I didn't put in plain molding because the whole group of cabinet manufacturers, if they consume a year a thousand dollars' worth of it, the whole industry, I don't know what I am talking about.

Machine-carved pressed molding is not made here. I made a statement which was protecting myself. I think I used the words "in the clinches". I never know what the other man is going to do and that is what I did. I was not concerned with the mill end of the game, I am there looking out for myself. I know in general what is the mill end.

A mill would use molding, that is not on the list in 1936. They would use jambs and sash, that is substantially what they would use. Plain moldings would be the seven thousands or eight thousands series stuck molding; that is manufactured in this

(Testimony of J. G. Ennes.)

area. Jambs and sash are manufactured in this area. Quite a bit of those materials are used which come from outside of the State, about ninety per cent.

I was interested in this local exempt list between the local manufacturers because I am interested in anything that has to do with the wood manufacturing end of the game, and I put that in there to protect my interests, and then I put that general clause in there to protect me in any event if there should be an omission, that is, the final clause you see there was in the event any argument should come up I would be in a position to do as I have always done, get the material wherever I see fit, and we have done just that.

I didn't write a separate contract for the reason that we are dealing with the same union right down the line [534] and we are facing the same group of men.

We, in the last negotiations, were assured that the new contract would be as the existing one and we woke up in 1939 and found out that the same kind of a contract did not exist. The Redwood Company got a separate contract because Redwood Manufacturing Company is located in an area outside of the jurisdiction of this area, the same as Pacific Manufacturing. When you get around to 1939 you will find out that is just the position we took, and while you will find some modifications there, when we discussed that, there were differ-

(Testimony of J. G. Ennes.)

ences on which we then agreed, and then we wanted them all alike. We did not ask for a different contract from the mill owners.

I signed that contract representing the people that I testified I represented in 1936. I copied paragraph 16 where I thought it was necessary to protect my interest, and then I took a further precaution and added a later clause. I added the first part of sixteen in general from the 1917 agreement I referred to. It wasn't in that original form and it probably went through, six or seven different changes. I don't know who originated it.

I was very much interested in getting me out from anything that would harm my group. Organized Labor took the position we were degrading the stamp and they were trying to get it back into the position it was before the town was reasonably organized, that is where the restrictive clause starts from. Then I wrote the last part of 16, which is the "nothing herein" clause. I said I had appeared before the Federal Trade Commission. That was a case here in Philippine mahogany; that was several years before 1933. I was with Fink & Schindler Company at the time. We had used a lot of Philippine mahogany and they asked me to appear there and testify on a change of the name.

From time to time I received memoranda from the Federal [535] Trade Commission, I think it was on changes, the standardized nomenclature and things of that kind, so I put that in there in

(Testimony of J. G. Ennes.)

case something should be shifted; they called it one thing and then the other, and there would be no chance of us getting caught in a change of name that might be applied to it.

I knew that Organized Labor would observe this contract and I knew that when any eventuality or anything did happen, I never knew when somebody was going to change their mind, all I had to was say, "All right, that's there, that is what it is, that is what we were living up to." I knew they would live up to it, that was the reason for putting it in there, and there was no objection, and that clause there, nobody raised any issue, they didn't go into it at all. I wrote it. I said, "here, this ought to go in there." It went in. I didn't copy it from anywhere. I think I cooked that thing up.

"Q. You knew, of course, when you wrote it and did not put in these jambs, moldings and sash in the exempt list, that there would be a restriction on them, did you not?"

"A. I was in no way, shape or form interested in that at all."

I didn't know there would be a restriction on them. There was an argument on what items would go in there on the exempt list, quite an argument. They wouldn't stand for jambs and moldings and sash going on there because they didn't want those items to move within the area, they manufactured themselves.

I had no other contracts at all with these two

(Testimony of J. G. Ennes.)

Unions in 1936 or 1938. I sat on the Employer-Employee Wood Products Conference Committee. I was a member right on through. I was present when they passed on the definition or meaning of the terms "Flooring" and "T & G". I wrote a letter, a little list about it, saying it included certain definitions, that was an explanation or interpretation of the T & G of the exempt [536] list. T & G V is manufactured here. T & G C V and fir is manufactured here. That is sending the lumber down here to be manufactured, not the log.

I sent out the letter (Exhibit 146) after the committee had acted. I was representing the cabinet manufacturers as my interest might appear there and I acted as the clerk to keep the stuff straight. There was a controversy as to what was within the exempt list and what was without. The committee passed on it. I was a member of the committee acting for the cabinet people. The cabinet people used a small quantity of the material that was defined as being within the exempt list.

My interest was any interest I might have there; if they were going to change anything I wanted to know about it. I was acting as Secretary of my own group; for the Conference Committee I was acting as secretary. I never kept any minutes of any of the meetings. I was in the office by myself. I used public stenographers. I have a distant connection for a telephone. I don't go through any laborious business. Sometimes I would make a car-

(Testimony of J. G. Ennes.)

bon of whatever the stenographer wrote for me and sometimes I wouldn't. I used a stenographer and I don't know whether public stenographers always make a carbon. I don't need a carbon if in my opinion the thing is Okeh. I told all my public stenographers to destroy the notes and return them to me. I don't remember that I ever told them that I destroyed my papers, I don't think I did. I explained that to you, destroying of notes by public stenographers is nothing unusual. I was going to continue by saying, in the cases of public stenographers, there would be nothing unusual for it, because the notes really belong—

In the letter Exhibit "J" I was referring to Anderson and Hart, the Employers' representatives in connection with the arbitration award and Messrs. Ryan and Kelly, they [537] were the Labor representatives, one was technical adviser, and the other as an arbitrator. They came to me before that was written. They came into my office and told me what they wanted. That was given to me to draft, and I brought it back in there and exception was taken to that by Mr. Ryan. Mr. Ryan said, "That has to be in permissive form," and he addressed me, I had been the one that had taken it in, "and if you think for one moment, or any one of you think for one moment that for a handful of lumber out of Oakland that we will stop some of the big uptown jobs, you are crazy, get that in permissive form," and I wrote one in permissive

(Testimony of J. G. Ennes.)

form and then that went to Judge Johnson. I did not take it to Ryan, they were there. They told me what they wanted written, I wrote it in draft. Ryan objected.

After we had it in the smooth form they said, "we will call for it." Before it was rewritten he objected. Mr. Hart got it in his mind that it should stay as it was, and he took exception with Ryan, and Ryan pointed out that is the way it was, and that is the way it was going to be now. I took the position, "Well, after all is said and done this thing is going up before Judge Johnson, and we were a bunch of sea lawyers, and they could clarify the situation." The next time I saw that thing it came back in the award from Judge Johnson and again it had been slightly changed.

It was submitted to Judge Johnson to be incorporated in the arbitration award. What Judge Johnson did I don't know, because I was not there, but what I do know is when the award came back that the wording had been slightly changed. I testified that the wages and hours were the things he was instructed to do when the instructions were written. Everything else was negotiated. That was something that was added. That was not a negotiated matter, as far as I know it was added in the Arbitration Award. [538]

Mr. Anderson and Mr. Hart represented the Employers, these other gentlemen represented the Union on the Arbitration Board. I represented the

(Testimony of J. G. Ennès.)

cabinet manufacturers, they represented the mill owners and they represented the cabinet manufacturers. Under our arbitration one man represented the mill owners and they had another man, called a technical adviser, he represented the mill owners. On the other side he had a union man who had a man backing him as technical adviser, and those four, one side represented the mill owners and the other side represented the laboring men, and Judge Johnson sat in the middle.

I wrote that letter for this reason: At the time that arbitration was going on there were four counties in the Bay Area at that time under the jurisdiction of the Bay Counties District Council; and one of the parties who had gone through the negotiations had not ascribed to the award. There was an award about to come down.

The award is dated July 15, and the letter was dated July 12, so there was not any award then. We wrote that letter for the purpose of bringing the four counties into an agreement as to the rate of wages. It does not say anything about that, but I can interpret that for you.

I testified to the same thing this morning I am testifying to now. The object of this was everyone in the area would have the same rate of wage. As far as I know the wage had not been settled then. We were anticipating it was going to be set, that it was going to be different ~~on~~ one part and different in another. Nobody told me it was going

(Testimony of J. G. Ennes.)

to be different. I was not either a mindreader or a soothsayer.

I knew this, that the tendency of the wage was to raise, and I also had a right to come to this conclusion, so here we had in mind the wage scale and the cost of living was [539] going up, and I also knew we had tried to figure with labor and they gave us a rate that was higher than the minimum rate, and it was objected to and I had every right to believe that somewhere along the line the arbitration would strike a medium somewhere in there. From time to time I guess, and still guess right now on arbitration, I did not know what it was going to be, I am guessing, I have told my people from time to time, I am still sitting in arbitration, they had better get the rate up for work in the future, because I was fearful that the arbitrator was going to hand down a higher rate, because I am cognizant of certain things, and I know the cost of living has risen.

I was making an intelligent guess. It was incorporated in the award and in the contract effective June 15, 1938. It was left out of the October 18 one, that changed the rate down to \$8.00. At the time the wage was the same in both places up to that time.

I would not even make a guess at how long the A.G.C. meeting lasted. The notes I heard my counsel read this morning represent what I remember was said at that meeting. As far as I can recall

(Testimony of J. G. Ennes.)

Exhibit 163-1 is the substance of it, the substance of everything I said.

I remember talking to Mr. Webber about our setup in San Francisco, I don't know what date. I do not recall talking to any other outside cabinet men. I did not talk to any cabinet men outside of the State about the setup here. I never made a statement to any of the cabinet men that do not operate here that it would not be good for their health to come in here.

I do not have the letter from some hardwood business interested in our membership, and do not remember who it was from.

We were negotiating in 1938 something like two or three months. I represented Lee Roselyn in those negotiations. [540] I reported to him like I testified that I did the others in 1936. I do not remember any specific report to Mr. Roselyn in 1938. I represented Mangrum, Holbrook & Elkus in the 1938 negotiations. I made reports to them on the wage rate, from time to time what the increase in rates was going to be. I talked to them over the phone. I do not recall sending them anything. I do not recall any mimeographing of contracts or papers that arose out of the negotiations. I did not mimeograph any reports to them on this subject. I did not circulate any mimeographed reports to them.

I recognize Exhibit 93-32 for identification. I am the author of it, I sent it out. That is a mime-

(Testimony of J. G. Ennes.)

ograph, I did not remember that until you handed it to me. I probably sent it, if I sent it to one I probably sent it to all.

Mr. Wine told me he had qualifications of a particular character and he told me the F. B. I. had legal training, and they were auditors, trained as accountants. I don't recall any statement more about that.

I presume I had meetings from time to time during these negotiations with our membership. I don't know whether I did or did not. What I used to do when anything was important, as I thought, I would call them up. As I was engaged in this I probably was not engaged in anything else, because it went on continuously. I cannot recall of any meeting that I had during that period. I had blanket authority to settle these matters without a meeting. I do not recall having any meeting while the negotiations were going on. That would be in 1936, for about three months, and about three months in 1938. I did not keep any minutes of the 1936 meeting.

I will explain to you how we conducted our meetings. Whenever there was anything I considered of importance I would call them up and ask them to report. Then the President would [541] call them to order and I would then make my report. Those meetings were not conducted in a formal way. We did not keep any roll call; they used to away back in the old days, but not in my time. I don't remember of ever making a roll call.

(Testimony of J. G. Ennes.)

The dues were based on the ability, you might say, to pay. They went along at so many dollars per week and it was changed from time to time; I took their totals periodically and applied a percentage to it; then if I did not have enough money one way or the other I would adjust that from time to time, and that ran around something like \$5,000 a year.

There was not a roll call record of attendance during my incumbency by anybody so far as I know. We continued meetings during the corporation, along the same lines as under the old setup. The only time there was a roll call was when I got the books there the first meeting and asked those who wanted to sign, and some signed who were there and some who were there did not sign. I have no copy of the minutes since the first one.

Redirect Examination

By Mr. Faulkner:

Board of Directors of Commercial Store Front Institute has never met as such since its incorporation. I have not destroyed any books, papers, records or files since the first meeting with Mr. Wine in April, 1940.

The contracts in evidence that I have identified were produced by me. I gave these contracts either in original or copy form to the Grand Jury and they were given back to me and I gave them back to Mr. Wine.

I did not prepare the entire exempt list. I was

(Testimony of J. G. Ennes.)

merely the man who wrote it out, except that I added certain portions, the other portions were there at the direction of [542] some other person. The first sentence, I would say, had many fathers. It is, however, in general substance, from the 1917 agreement. I wrote the last paragraph that follows the exempt list, in its entirety. The only matter discussed before that paragraph 16 was written was something about the use of material in this area, is what I testified to. The application was to this area, and they had a broad application and they did not want to work on stuff that was interfering with organized labor. The original proposition was, as I got it, that organized labor was not going to work on non-union goods. [543]

I sent papers marked 93-32 to members of the Cabinet Manufacturers Institute. I wouldn't call it a report.

Thereupon, Exhibit 93-32 was introduced in evidence as defendants' Exhibit L, and read to the jury as follows:

“Memorandum as to Payment of Wages Established by Arbitration Effective Next Pay Day.

“The rate of wages established by Employer-Employee Agreement effective June 15, 1938, shall be paid in the following manner:

“1. All Employees subject to the Agreement shall be paid the new rate of wage retroactive to July 10, 1938.

“2. The payroll shall be made up so that the

(Testimony of J. G. Ennes.)

difference between the old rate and the new rate is on a separate check. The check covering the difference shall be endorsed at the time of payment by the Employee to the Employer and a receipt issued covering such check or checks showing name of employee and amount in detail, said receipt to be delivered to a representative of the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. A memorandum receipt will be given to the employee if demanded. The check shall be applied to offsets arising from work subject to the old rate of wage as set forth in Paragraph 32 of the Agreement. The total amount so applied shall not exceed such offsets as agreed to by the Employer and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The amounts of the offsets agreed to shall be in writing and signed by the Employer affected and the Conference Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters. The endorsed checks shall be held intact for the Union's accounting.

"3. In the case of offsets not existing or having been paid off, then the checks shall be endorsed to the Conference [544] Committee Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters in such manner as they shall designate. The Employer shall deliver said checks to a Representative of the Conference Committee

(Testimony of J. G. Ennes.)

Local Unions No. 42 and No. 550 Bay Counties District Council of Carpenters upon demand and receipt for same.

“4. All funds withheld by the Employer as offsets against agreed to jobs subject to old rate, unless completed by March 1, 1939, shall be released to the Union. Upon the completion of said jobs the Employer shall be refunded by the Union in the amount agreed to.

“5. Unadjusted matters shall be referred to the Joint Committee referred to in Paragraph 27 of the Agreement.

“6. In the event there exists work on which a refund is claimed and not agreed to by the Union, same shall be noted on the list agreed to as ‘The following jobs are subject to review as per Paragraph 27 of the Employer-Employee Agreement.’”

I sent those instructions to those who belonged to the Cabinet Manufacturers Association. My labor negotiations on behalf of members of Cabinet Manufacturers Institute were not confined solely to Millmen's Unions 42 and 550. I handled all their labor negotiations with three separate unions—milling, cabinet, finishers and carpenters. Rates of wages changed from time to time as to all of them. We had separate written contracts with milling and cabinet finishers. One written agreement with carpenters, the other one is not. It is agreed to substantially the same as the general contractors, but

L

(Testimony of J. G. Ennes.)

one-paragraph was not agreed to. Agreement with the carpenters has not been read in evidence that I recall.

Recross-Examination

By Mr. Clark:

The physical work of writing the 1936 contract, besides the exempt clause, I did and re-did a number of times. I would [545] draft it from time to time and submit it back, and would go over to the meetings and whatever sections were changed I would redraft and submit again, until all of us arrived at the final draft which was signed. That was done in 1938, also. Exhibit 132 is the 1938. Section 17 reads as follows:

“In the interest of providing productive employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this Agreement. The purchase, working and sales of the following products is excepted.”

The physical writing of all that during the period of negotiations I wrote. It was at the dictation of those present. That is the language of all, a composite. I was acting as sort of secretary in 1938 and 1936, like I was doing for Wood Products Conference of San Francisco. I was acting as secretary for Lumber Conference of San Francisco. I

(Testimony of J. G. Ennes.)

have defined it as acting as a clerk. I also was representing my own interests.

Paragraph 17 of Exhibit 133; which is the October 18 amendment, reads as follows:

"A. 'In the interest of providing employment, it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers or members of the United Brotherhood of Carpenters and Joiners America signators hereto.'"

That superseded Section 17 in Exhibit 132, which was the original 1938 contract, to this extent—there is another copy that came in ahead of this which was headed up "Rough Draft." The original paper, the paper that was signed, has a heading up there, "Rough Draft." The body of it is the same. The wording [546] is exactly identical. That also was put in my re-draft by me and put into smooth draft and brought back and then those concerned carried that away and were supposed to vote on it. Exhibit 175 is the rough draft. The difference between that and Exhibit 133 is the language, "Rough Draft, Subject to Correction," at the top. Exhibit 175 is the agreement which was supposed to have been smoothed out and voted on. It was nearly 8 o'clock at night when this thing was done. The men, themselves, were waiting to vote, as I understood it, and we couldn't get the wording straightened out. I

(Testimony of J. G. Ennes.)

used a public stenographer and I had to go to the Palace Hotel, that is the reason we put that on there. We didn't know what the wording was. Exhibit 133 was an inquiry to find out where we were at—in other words, what had happened. Section 17 in both of them are identical. Section 17 in the October 18, 1938, says that no work would be done on any material or article that has been made under conditions unfair to the members of the Brotherhood on articles made by employers of members of a Brotherhood. The whole section 17 in Exhibit 175 had many authors. I drew it up in final form. List of exempt items was taken primarily from a contract of 1917. Last paragraph of section 17 comes from the other contract and I was the author of that at that time. The last paragraph I referred to had the same authorship as section 17 Exhibit 175. Exhibit 132 is the contract and Exhibit 175 is the change which broke the rate back to \$8.50; 132 has to deal with four counties, and 175 has to deal with six counties. I don't recall that anything particular came up about the exempt list in the 1938 setup. Exhibit 132, the contract in the summer of 1938, has stock plywood panels, one of the exempt items. I think that was in the 1936 exempt list. They are manufactured in the Northwest and in California. Stock plywood is made out of logs, depending upon the mill, in the manufacture of plywood panels you would make it out of hardwood. If you manu- [547] factured it out of Douglas Fir

(Testimony of J. G. Ennes.)

you would manufacture it out of Douglas Fir Logs. In 1938, they were manufactured in the northern part of the State, I think the white pine. I don't remember the company. The Pacific Manufacturing Company used to build up a panel, they took the panels and built them up. In 1938, they manufactured what is known as stock plywood panels. Our group bought plywood from any sources or every source. There was Oregon pine panel coming from outside of the State, and Douglas Fir. The only place Oregon pine panel is manufactured in quantity, in stock, is in the Northwest. It is not a question of grain—it is just a question of manufacture. Our concern did buy that plywood from the Northwest. It was on the exempt list in 1936 all through. I do not recall that we placed any additional items in 1938 that were not on the exempt list in 1936. We did not place any additional items. The exempt list was important to our group to this extent, that that whole paragraph, the whole arrangement was important, that I wanted to be sure under any eventuality that the cabinet manufacturers were going to be in a position they have always been with regard to arrangements. When the thing first came up in form, I was disturbed about it and thought in some way it might curtail us, and I called Mr. Mullen and told him that it looked like there might be some difficulty on account of the movement to get the companies unionized. There were two conversa-

(Testimony of J. G. Ennes.)

tions. He just told me to watch my step, to be sure to see that nothing happened to interfere with the free flow of material to the cabinet shops. That is the substance. I raised the point that there might be a strike. His position was, strike or no strike, stand pat. Then there came up the question of this list, and I added items to this list. This is the second conversation with Mr. Mullen. I called him up and told him I thought I had in my list every possible conceivable thing he could ship regardless of who brought it in or where it came from, locally or otherwise. I did not know what [548] turn it might take, and I called him on the telephone again and asked if there was anything he could think of that would interfere with it and he said, "No, it sounds all right, but you have been at this game long enough, you be sure that nothing interferes with, any stoppage." I told him, "I will be sure of that, because I have got a paragraph here and that affects our case." I didn't care what happens, I know this, that contract will stand up, because somebody may get cockeyed on this thing, but they will stand up to it. He said, "All right, you have been at this game long enough, and you be sure nothing happens." I was sure, and I believe he was assured that I had everything covered so that nothing possibly could happen with regard to somebody wanted. From that time on, I did not do anything more about it. I felt safe and assume he did or he would have said he was

(Testimony of J. G. Ennes.)

not. I could not tell approximately the date of this conversation. It was in 1936. I did not tell any other members. Mr. Mullen at that time was president. He told me to go ahead and be sure I had the particular thing covered so we would be protected. I represented, in 1936, all of the defendants with the exception of Leo Roselyn and Mangrum, Holbrook & Elkus. In 1938, in addition, I represented Leo Roselyn and Mangrum, Holbrook & Elkus. They were members, and I proceeded on the theory I did represent them. Whether I did legally, I don't know—I assume I did. The president authorized me in 1936 to go ahead, and in 1938 I went as I did in the previous years.

“Mr. Faulkner: So there won't be any dispute in this respect, I think I have made it clear that as to the employer defendants Mr. Ennes did represent them in these matters.”

I signed the letter Exhibit 11-1 to the Millmen's Union 42. I did not write the letter. I signed it and it was mailed. I don't know the exact date when the Millmen's Union appointed an additional business agent. It was after that, as [549] a guess, I would say, about two months. I don't know the entire duties of this additional business agent. I know he was checking up on the rates of wage, trying to find out at my request what was happening in the way of chiseling that had been going on. I do know he straightened up matters on the adjustment, the audit, and things of that kind. I know

(Testimony of J. G. Ennes.)

that he visited various jobs looking for labor conditions. I don't know that he checked up on Northern material that came in this area. I knew the union selected an additional business agent. I don't know that they did for the purpose of recapturing the work that had been going out of this territory and to non-union plants. I did not know that was in the minutes. I knew that they did select a committee. I did not know who they were. I didn't know that according to the Union minutes this additional business agent was to make it his particular work of contacting owners and home builders, architects, contractors, merchants and related trades, to have their work done in the local plants and to hire men of the union. I know that he dropped into the Association from time to time. Mr. Helbing. I know he was to keep in touch with individual employers and obtain their cooperation for the same purpose, or that he was to keep a constant check on retail lumber yards and second-hand yards, to see if the millwork and cabinets they sold were local union-made products. I did not know that is what the union selected him for. I knew some of the things they selected him for.

I think the conversation with Mr. Webber was in Del Monte. Mr. Mullen was there. I do not recall who else was there. I told Mr. Webber they were an open shop; that I thought it was better for them to go closed shop, because they were between horns of a dilemma; that in any eventuality the

(Testimony of J. G. Ennes.)

Government would see to it they should go closed shop; that we worked with a closed shop and although it was bad enough it was not as bad to [550] sit down and fight all the time. It was probably before 1936. I did not tell him whether he went union or not that it would be unhealthy for him to try to do any business in San Francisco. All of the members of our group in 1938 were union. There were non-union plants operating after Exhibit 175 was signed in October, 1938. I do not know the name, but there were plants that were not union and were not organized. They were small.

PERCY ROBERT KAHN,

called as a witness in behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Adams:

I am connected with Forsyth Hardwood Company in San Francisco, and have been for about 20 years. We handle a general line of hardwood—probably 42 varieties, all imported out of the State of California, chiefly from the South and from the Philippines, Japan and Africa. Some of the types are ash, oak, hickory, mahogany, walnut, birch, beech and maple. About 75 per cent. of it comes in rough and 25 per cent. comes in surfaced, or smoothed by milling operation. In 1936 to June, 1940, our firm did business with Mullen Manufac-

(Testimony of Percy Robert Kahn.)

turing Company, Mangrum, Holbrook & Elkus, Pul-Vue Fixture Co., that is Mr. Schmidt, Fink & Schindler, Exposition Woodwork Company, L. & E. Emanuel, William Bateman, Unit-Built Fixture Company, H. Schulte & Son, Ostlund & Johnson and Braas & Kuhn. We sold them many of the varieties we carried. The material did not bear a union label.

LEO ROSELYN,

called as a witness on behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Faulkner:

I am the owner of Unit-Bilt Fixture Company, designers and manufacturers of commercial store fixtures, and we manufacture and install store fronts and work kindred thereto. Our main [551] business is the manufacture of cabinet work necessary for the complete installation of a store, regardless of the type of store. We use practically every material necessary for the installation of a store, from the floor coverings to the fixtures, to the decorations, to the materials used in the store front, which are varied and numerous. That is what we sell to our customers. I have been in business as Unit-Bilt Fixture Company since approxi-

(Testimony of Leo Roselyn)

mately the first part of 1937 to date. I was not in the business described in the year 1936.

It is understood for the purpose of the examination that, Cabinet Manufacturers Institute and Commercial Fixture Institute relate to the names that are set out in full on the indictment. I became a member of Cabinet Manufacturers Institute and later Commercial Fixture Institute. Subsequent to 1937, when I joined Cabinet Manufacturers Institute, I knew Mr. J. G. Ennes. He was secretary of Cabinet Manufacturers Institute. In 1938, I was familiar with the fact that negotiations with labor were going on. I don't recall the date, but it was in about the middle of the year. When I commenced business in 1937, I was not familiar with any of the negotiations that had been carried on 6 or 8 months before with labor to fix the wage rate. I didn't ever receive any copy of any contract entered into with organized labor in connection with the wage rate. I was informed of the wage rate. We employed cabinet makers and we employed finishers and carpenters. The same rate applies in most instances to cabinet makers and finishers, but there was a higher rate that applied to carpenters. We have a separate crew that we designate as carpenters. The carpenters are used on the outside work, including installation of fixtures originally made in the shops and they take care of our alterations. Personally, I did not have occasion in 1938 at any time to negotiate any con-

(Testimony of Leo Roselyn)

tract of any kind with organized labor. I knew of my own knowledge about the rate of wages [552] we were paying the union men who belonged to Millmen Unions 550 and 42, and that it was changed in the year 1938. I believe the rate was changed from \$7.40 to \$8.40—I am not sure of my figures—probably \$8.40 to \$9.00. That is my best recollection. I did not ever see the contract fixing the wage rates. Millmen Unions 550 and 42 were one of three unions we employed, our records will show. We observed any change in the wage rates in 1938, affecting Millmen Unions 550 and 42. I don't have charge of the records that are kept for the men, because I devote most of my time to selling and estimating and designing. I am not familiar with some of those conditions. From 1937 until the return of the indictment I had never seen any written contracts with organized labor. That is true of all the employees we had. I knew of their existence, but I had not seen them. Apart from any written contract, I never had any discussions with any union man on the subject of from whom we should buy the materials used in the operation of our business. A union man never told me where to buy, nor suggested we buy it from the local mills. I buy the product of lumber mills. That is my business. In the course of that business, I use lumber materials. I buy all of my materials from local lumber dealers. I do most of my business with Forsyth Lumber, from whom I buy all my hardwood; West

(Testimony of Leo Roselyn)

Coast Lumber Company, from whom I buy practically all my soft wood, and United States Plywood Company, I buy all of my plywood. Those three companies supply substantially everything I use in the nature of lumber. If I were in need of millwork and patterned lumber, they would supply it to me—in fact, they have on occasions. I know the hardwood that I buy comes from the Eastern States, Southern States, and other parts of the world. I know that the soft wood that I buy practically all comes from the Northwest. Occasionally, we buy a little redwood which comes from California, but we use very little of that. The plywood, some of it comes from the [553] Northwest; wherever there are soft woods, and some of them come from the Eastern and Southern States, when they are hard plywood. Sometimes millwork on the millwork or patterned lumber material which ultimately got into the Unit-Bilt Fixture Company was done in San Francisco. I did not ever select the mill. I order the lumber as I require and if his stock does not have the particular type of material I need, he may and did send it out to some local mills to be milled to the specifications which I asked for. I bought my materials in less than carload lots. Material I bought that might have been sent to some local mill to be processed is only usually in small quantities. I mean by small quantities, if we ordered, say two or three thousand feet of lumber and require a special size or thickness,

(Testimony of Leo Roselyn)

and want it surfaced, the local dealer would send it out and have that particular part of the work done and send us the complete load, which would include what was worked on what was directly out of his rack.

During the period subsequent to 1937, when I entered business, the lumber material that came into my shop did not bear a union label. No one has ever refused to work on any material we brought into the plant. We never have had any discussions on the subject-matter with them. When the material has been fabricated into whatever design requested for the purpose of filling the contract and went out to be installed, it was installed by union carpenters. The union carpenters employed have never refused to install products of Unit-Bilt Fixture Company. They have never had any discussions on this subject of not installing them.

I am a licensee of Grand Rapids Store Equipment Company. Both of the employees of that company testifying in Court were members of the organization through which I am licensed. I believe our negotiations for the licensing were completed about the end of May, 1930. I was licensee of the Grand Rapids people from the time I was licensed to the indictment. We are licensees in Northern California [554] and part of Nevada, and either sell or manufacture the products which they sell under catalog. They have a catalog of standard

(Testimony of Leo Roselyn)

fixtures and in conjunction with that catalog we have a right, under the license, to sell that product or make it at option, and by selling it, I mean selling the product made in the Grand Rapids factory, or, at my option, making those same products under a royalty basis. The object of this license was that I would add to these standard fixtures sold special equipment and fixtures that I could make more adequately in my own plant, and together with that take care of all of the special work and installation necessary to make a complete store job.

I get business from J. C. Penney Company and I am their representative in the San Francisco area, carrying a stock of fixtures for them. I have done that continuously since I commenced business, and still do. I know Mr. Christenson, who testified, very well. In connection with my representation of the Grand Rapids Company, I didn't know anything at all about Grand Rapids' connection with the work in Roos Bros. No representative of that company ever discussed that with me. I recall Mr. Christenson's testimony about J. C. Penney Company. He was District Manager of J. C. Penney Company. In August, September and October, 1938, I did work for J. C. Penney Company, with respect to a store in South San Francisco.

Exhibit 178 consists of copies of stock orders submitted by our company to J. C. Penney Company for work in their South San Francisco store. They are invoices to the J. C. Penney Company, prepared

(Testimony of Leo Roselyn)

after the work was finished and installed. We did all of the work represented by the invoice. Defendants' Exhibit H for identification is a list of materials sent to me by the J. C. Penney Company, giving me the amount of fixtures that were to be taken from the Vacaville store and installed by us in their South San Francisco store. The direction is dated August [555] 25, 1938. I probably received it within a day or two after it was dated.

Thereupon, the document was received in evidence and marked Defendants' Exhibit H.

"Mr. Faulkner: Under the heading "To" there is a number here, '82537,' and the date appearing here is August 25, 1938. 'Address J. C. Penney Company, Inc. Store 1059, Vacaville, California,' which is typed over some mimeographed lettering here. Then there is, 'Located at, State Store No. How ship, South San Francisco, When California, 1539. Terms. Requisition and Store Number must appear on all invoices, bill of lading with weight must accompany all invoices. Delivery September 12th. All packages and cases must be numbered corresponding usual numbers must appear on all invoices and bills of lading.' Then there is a description of the items, shelving, and so on. 'Do not issue usual transfer charge. Accounting department will adjust at present book values.' There is typed, 'Construction Department.' "

That was received in the regular course of busi-

(Testimony of Leo Roselyn)

ness from J. C. Penney Company, on or about the date it bears. It represents a list of fixtures then located in the Vacaville Store and was submitted to me so that I could make their plans and add to it and take those fixtures and install them when they arrived in the South San Francisco store. My instructions were to pick these Vacaville fixtures up and install them in the South San Francisco store. I removed the Vacaville fixtures and installed them in the San Francisco store. I have our invoice of October 20 which covers that part of our work which included the labor necessary to haul the fixtures from Vacaville and install them in the South San Francisco store, which invoice is already in evidence.

In addition to the order dated August 25, 1938, [556] document marked Defendants' Exhibit M is an order dated August 25, 1938, received from J. C. Penney Company, and we furnished and installed these items.

Thereupon, document marked Defendants' Exhibit M was introduced in evidence.

I heard testimony about Grand Rapids and the Roos Bros. job. I never heard anything about any connection Grand Rapids had with Roos Bros. During the time I have conducted the Unit-Bilt Fixture Company I have never engaged in the business of selling anything manufactured or handled as a commercial fixture man to lumber yards and jobbers in the San Francisco Bay Area. None of

(Testimony of Leo Roselyn)

the articles handled in our shop are fabricated for the purpose of being used in construction of homes and dwellings. We do no work of that kind at all. After lumber comes into our Commercial Fixture business we never sell it to anybody in the form received. We only use it to fabricate the fixtures that we manufacture.

Cross-Examination

By Mr. Sirpoli:

I have been in business as Unit-Bilt Fixture Company since 1937. Prior to that I was sales executive for the L. & E. Emanuel Company, from 1935 to the end of 1936. I have had a connection with the Webber Company during the period I was in business, from 1937 to today. My duties are primarily looking after sales promotion and designing. I supervise the books. I do not handle the payment of wages, but I sign the checks. I have a bookkeeper who handles the bookkeeping and wages. At one time, my wife did it for me—later, we had a man by the name of Wordenshine, who is now doing it. I believe Mr. Wordenshine was doing it in 1938. The correct scale was \$7.40, \$8, \$9 and then changed back to \$8.50. I heard the testimony of Mr. Strong. I heard him testify he was an auditor. I believe he said he was [557] auditing the books of all the cabinet shops. I do not recall that he ever came to my place of business. I know there was an arbitration award in connection with a

(Testimony of Leo Roselyn)

wage scale and that provision was made with relation to the payment of wages on jobs already contracted for by the manufacturers. I know there was an audit of our books made in connection with the adjustment of that wage. I know somebody appeared at our place of business in connection with that adjustment. I don't know who he was. I didn't see him or talk to him. I think my bookkeeper, Mr. Wordenshine, must have handled that. I would say the result of the conversation was that he audited the books. I knew about it in a general way but I did not go into the details. I relegated those duties to the bookkeeper. I only recall one audit. I believe that is the only one. It is correct that I knew of the existence of the contract with the Labor Unions 550 and 42, but I hadn't seen them. I was informed of the existence of that contract by Mr. Ennes. I don't recall when that was. I was informed of the existence of that contract no doubt after it was negotiated, or after it was made. I have no reference to anything in particular. In 1937, when I became a member of Cabinet Manufacturers Institute, I did not know of the existence of a contract with the local unions. I knew there was a rate of wages that were in existence and I conformed to those wages. I knew, after I joined the association, Mr. Ennes was representing the members of the Cabinet Manufacturers Institute, in connection with labor matters. Before I became a member and paid dues, I knew there was a union

(Testimony of Leo Roselyn)

wage scale. I did not know of any particular contract, however. Before I actually paid dues and became a member, I knew Mr. Ennes was acting on behalf of the members of the association in labor matters. One of the purposes of joining was to get the benefit of his services and that he would represent me in those matters. I knew there was a change from the Cabinet Manufacturers Institute to the Commercial Fixture [558] and Store Front Institute. I received a phone call from Mr. Ennes with regard to it. I received no letter. I went to his office. There was a general meeting called of the Commercial Fixture group. There was a discussion at that meeting. As I recall it now, there was a general meeting that included quite a number of individuals. I attended only one such general meeting. I recall some of the men present—quite a number of them I didn't know. I recall that Mr. Ennes was there and Mr. Mullen, Fink & Schindler, Mr. Stauffacher. I believe Mr. Kuhn was there, and Messrs. Schmidt and Schulte were there. Mr. Brandelein was there. I am not sure if anyone was there from L. & E. Emanuel Company and if Mr. McRae was there. The people I recall were part of the general group. There were others, but I did not know them. I think Mr. Ennes presided at that meeting. Mr. Ennes explained there were negotiations that would have to be made with the unions for new wage increases, and he was calling a meeting for the general purpose of discussing

(Testimony of Leo Roselyn)

that subject and had in mind to form a committee that might deal with the unions, so everyone there would not be confined that same activity. The only meeting I know of was with respect to wages in 1938. As I recall, it must have been in the middle of 1938—I don't know just exactly the date. It wasn't a special meeting of the Cabinet Manufacturers Institute only, it was a general meeting for, I believe, cabinet shops and some of the mills, to which I had been invited. The meeting, I believe, was called for the purpose of forming a committee to talk with the unions and negotiate with them regarding this wage condition which they were talking about. I don't recall if there also was discussion as to the forming of a new contract or signing of an agreement with the unions. I would assume that those negotiations would pertain to the contract which was negotiated with the unions after they had agreed to those conditions. I believe a committee was named. I do not recall who the members were. They didn't [559] discuss at that time an exempt list. I have become familiar with the exempt list only since I have appeared in court. Prior to my actual appearance in court, in connection with this trial, I knew nothing about such exempt list. I never discussed that prior to my appearance in this court room with anybody—not even my counsel. I only met my counsel once before I appeared in court. I couldn't say a discussion about an exempt list didn't take place. I don't

(Testimony of Leo Roselyn)

know about it. That was the only meeting I attended. I was at the office of Commercial Fixture and Store Front Institute on various occasions, probably the entire period in which I was a member. Perhaps 10 to 12 times when meetings were called there. There were occasions when meetings were called for the purpose of taking up matters that were of general interest to the group as a whole, and I attended those meetings. Mr. Ennes usually presided. There was no formality. It was just a matter of meeting and discussing problems that the meeting was called for. None of the meetings pertained to wage scales nor any exempt list. I know Commercial Fixture and Store Front Institute was incorporated in January, 1939. That was one of the meetings. I don't recall the date. Mr. Ennes must have called me, because I have no notice. He usually called me on all meetings. We very seldom got any other form of notice.

I may have received such a letter as Exhibit 60-3 (letter addressed to Mangrum Holbrook Company), but I don't recall it. I did attend a meeting that pertained to the incorporation of Commercial Fixture and Store Front Institute. When I got to the place of business of the Institute, there were other members of the Institute present, or of the old Cabinet Manufacturers Institute. That was a meeting,—I think the only subject was that Mr. Ennes said he had changed the name of the Cabinet Manufacturers Institute to more nearly interpret our

(Testimony of Leo Roselyn)

actual business, the Commercial store fixture business—that was because [560] we were general contractors and had a great deal of work on the store fronts, that he felt that would be a particularly emphatic part of the name, that would be helpful to us. There was quite a discussion about that name and why he had adopted that name as a substitute for the other. Mr. Ennes told us we were incorporated and he generally explained about the corporation; that the corporation was set up as a non-profit corporation or organization. It had certain functions and I think he explained there was a clause that established a president and secretary to carry on and act for the corporation, and I believe that at that time the president was elected. Those clauses were not read. Mr. Ennes just explained them to us, generally. I don't think he explained the duties of the respective officers—he may have—I don't recall. I think Mr. Mullen was elected president. I participated in that election. All those present participated in the election. I think Mr. Ennes was elected secretary and Mr. Ostlund treasurer. I participated in the election of all those officers. I know all the men who signed that were present and there were others there that did not sign at that time, and indicated they might sign later. We all signed in the presence of each other. That is my signature on the last page of the book entitled, "Minutes and By-Laws." (Exhibit No. 67.) I didn't read the page. Mr. Ennes asked us

(Testimony of Leo Roselyn)

to sign and I put my signature on without reading the page at all. Mr. Ennes had explained it generally, the general procedure and what those by-laws were and the organization was to represent. I accepted his explanation and was satisfied to be bound by it.

Defendants' Exhibit H is a list of items taken from the Vacaville store to South San Francisco. My employees installed those fixtures in the South San Francisco store. They removed those fixtures from Vacaville. They were not removed by J. C. Penney Company. We removed them. I think you will find an invoice that covers that, which is the last page of Exhibit 178. [561] No doubt Exhibit H came in the mail. I could not say definitely how I received it. I know it was in my possession. This is my exhibit, I brought it. If you ask whether I received the document I don't know, but it would be true of all our mail that comes from the Penney Company. I see them when they get there, I don't know whether they come in the mail, but that is the usual procedure. In this instance I don't know exactly how I received it. I know it was received immediately after the date thereon. I would say it came into my business files in the ordinary course of business; otherwise I would not know. I don't know definitely how it came. I know it did not come before August 25, it naturally came after that. I know there is a time between August 25 and September 6, in which shop orders were written

(Testimony of Leo Roselyn)

named were the officers I designated, regardless of when elected.

It is correct I said we did not purchase any mill-work. I manufacture stock moldings. My fixtures have been so small that they are negligible. I purchase very few moldings. I make practically all my own moldings, because I do special work. I have purchased in several instances some moldings. I have never purchased sash. I occasionally purchase doors. No *tung* and groove that I can recall. I have purchased flooring. I purchase no rustic of any kind. In the construction of store fronts or of fixtures, I usually purchase raw materials and make up or fill in the parts of work that are used.

Redirect Examination

By Mr. Faulkner:

All of the articles of lumber I purchase are for use by me. They are not purchased for resale in the form received by me.

RICHARD ELKUS

called as a witness for the defendants, was duly sworn and testified as follows:

Direct Examination [565]

By Mr. Baecigalupi:

I am president of Mangrum, Holbrook & Elkus. The corporation was organized on July 2, 1937. At

(Testimony of Richard Elkus.)

that time I was vice-president and general manager. Before I entered the company, I was in the paper business. This company originally was the Mangrum & Holbrook Company which we took over some of the assets, and the new corporation we called Mangrum, Holbrook & Elkus. It was not a successor of that company. We bought certain specific assets. We are in the bar and restaurant equipment business. We basically have glassware, silver, kitchen equipment of all kinds. Then we have along with that and in order to complete the circle, we manufacture certain metal equipment and we manufacture certain wood equipment in what we call the wood plant, so we make a complete job.

In our woodworking department, we make such things as bars and back bars, counters and all type of equipment that would fit into the restaurant or metal setup, water stations, tray stations and bus stations,—some joined with equipment that comes out of our metal plant. For instance, a water station is part wood and part metal. The whole purpose and idea was of developing the complete installation. We are class B members, associate members of this association, and at that time asked about it and was told that we got information regarding wages and hours for the employees in the wood plant through this means, and the dues, I think, were a dollar a month, although I haven't looked it up to find out. I think we paid only \$18 in

(Testimony of Leo Roselyn)

up. That order must have come into our file. I don't know exactly when the shop order was written up in connection with that order, but I know some orders were written up on September 6. We had received an order that covered new fixtures which we were to furnish, and naturally those new fixtures could not have been received without having received this order at the same time, because both pertained to exactly the same job. That is my recollection of it.

Exhibit 178 is an invoice covering materials placed in the South San Francisco store of J. C. Penney Company. There are several invoices covering that. The invoice also included a cost in connection with removal of fixtures from the Vacaville store as indicated in Exhibit H. I received orders in connection with the other fixtures mentioned in our invoice. I don't know where that order is right now. If it were a written order it would be in our files. Part of it is in my files right now—part of it you have. There was another order there too.

Exhibit M is an order dated August 25. That is not one invoice, that is about six invoices, so there is an invoice here that probably covers the items. There is another invoice [562] that covers this installation. The last page covers the Vacaville store. I don't know where the order is that covers the remainder of the fixtures incorporated in that invoice. I can look for it. If I had no order in my

(Testimony of Leo Roselyn)

file it is probably due to the fact that I checked the plan with the orders I had and received additional information either from their district manager or their construction man to make up the other items that appear on these other invoices. In some cases we did not get a formal order from the Penney Company to make certain parts of the equipment, but got verbal instructions to go ahead and complete the installation according to the plan.

“Q. Now, in connection with the J. C. Penney Company did you do and perform the work in connection with these fixtures and installation of the other fixtures by reason of the plan, or did you get an order with specifications?

“A. There was probably both.”

If it were a written order, I would have it in the file. I will search our files and ascertain whether I have such an order. I know we wrote up shop orders for these items. We have a shop record of the work performed in connection with the South San Francisco job. I can produce anything that is covered in that invoice that went through our shops, and everything that went through our shop we received an order on. I don't recall if there was an accompanying letter of instructions with Exhibit H. I looked through the Penney file on that subject and did not find any. I did find some shop orders.

The most important thing other than labor problems discussed at meetings of Commercial Fixture

(Testimony of Leo Roselyn)

and Store Front Institute was to get enough money to pay the secretary for his services. I recall two or three definite problems which we were facing in the industry, which I was particularly interested in. One related to legislation in Sacramento that might affect designing of our own work. I remember a meeting in which Mr. Ennes had appeared before the [563] Board of Supervisors and was reporting on some new legislation the Fire Department was trying to put into effect in the shops with respect to spray guns. There was no discussion in those meetings with respect to prices for commodities or services which I and the members of the Institute had to sell.

I have never heard of any agreement to keep millwork or patterned lumber out of the San Francisco Bay Area. I have no prior knowledge of that character whatsoever. I had no conversations at any time with anybody about an agreement pertaining to the keeping of millwork out of the San Francisco Bay Area, in 1938. I am very positive.

Redirect Examination

By Mr. Faulkner:

I understand millwork and patterned lumber to be the product of planing mills and saw mills as such. I did not manufacture, use or buy that product. All that work is done in my own shop. I did not put the date, August 25, 1938, on Exhibit M. The paper I ultimately received purported to be a paper prepared by the J. C. Penney Company,

(Testimony of Leo Roselyn)

dated August 25, 1938, addressed to Unit-Bilt Fixture Co.

I received Defendants' Exhibit H and acted upon it. I did not put the date August 25, 1938 on that paper. That is in the exact form that it was when received. I recall testifying about the election of the president of the Institute. I really don't know whether the President was elected by the members or by the Board of Directors. I know that when we talked about that Mr. Mullen was President. He may have been already president, I am not sure. My recollection was that at the time the president was elected Mr. Mullen was President, and so I inferred that it was done. Now that you mention that I remember that power to elect officers is vested in the directors of a corporation. I only attended one meeting with respect to that. It was at the [564] Commercial Store Front Institute.

It was thereupon stipulated that the minutes show the officers were elected by the Directors.

I do not recall having received, in the middle of 1938, a memorandum as to the effective date of the wages established by the arbitration.

Recross-Examination

By Mr. Zirpoli:

I can't refresh my memory as to just the exact verbiage used. I do know at the meeting that Mr. Mullen had been elected or was being elected president of the Association. I knew the other men

(Testimony of Richard Elkus.)

the last year or eighteen months,—in fact, since the start of the company. We employ cabinet makers. Whether that was the same union as the millmen's union, I am not sure. I have never seen any contract covering hours and wages or labor conditions, or any contract to exclude any material from this district, nor heard of those things at all. I have never heard of any oral contract [566] from anybody regarding any of those matters. I know Mr. Ennes. I saw him for the first time at a meeting of which we were told about. It was the first meeting I ever had heard about this association, on sales tax. I was at that time working on a sales tax problem and was trying to get some rulings, and this meeting was called of the association and when it was over regarding the sales tax, I spoke to Mr. Ennes, whom I saw there for the first time. Afterwards, I went down there and tried to get more information through our own attorneys, because that information did not evidently cover it. I do not recall that I attended any other meetings of the Cabinet Institute. I remember a letter coming in when the Institute was incorporated in 1939—a new organization to be formed, or something and we did nothing about it, because it wasn't of any interest to us at all. I didn't attend the meeting. I didn't see the articles or by-laws of the institute and didn't sign the by-laws. No other officer of our corporation signed any by-laws. No other officer from our organization attended that meeting. Purchases for

(Testimony of Richard Elkus.)

the wood shop are done the same way as all other purchases, through a purchasing agent. A requisition would pass through the purchasing department from the department requiring the goods and the purchasing agent would purchase it. Purchasing policy of the firm is very well defined, and that is, wherever possible, three bids are called for, and based on the price and quality, the low bidder gets it. I am not concerned from where any material comes. I do not know from where the materials come. In fact, it is the reverse of that—I have refused to interfere with the purchases in our business, due to the fact that I thought it would allow other officials of the firm to maybe choose their friends to buy from, so we have a definite policy that purchasing is done in a definite method. I assume millwork and patterned lumber is casing and door jambs and moldings, and things of that kind. We [567] may possibly on a fixture or bar use a little molding. I don't know whether we might buy a few feet of molding or not but I know we would make—I have seen molding in our plant to fit on these bars and counters, but we are not in the business of selling anything of that kind. We install store fronts; not as a regular part of our business. The whole wood end of our business only amounts to 10 per cent. We would do a store front when it has been proved that it will do the rest of the business some good. As a part of the services for hotel and restaurants and bar fixtures and bar

(Testimony of Richard Elkus.)

equipment, we install bar fixtures, stalls, seats and counters. Those are made in our wood plant. Our employees install our fixtures. The men who work on the inside are cabinet makers. The men who work on the installation are carpenters. No one has ever interfered in the installation of any of these things. The only thing I know about an exempted article is the question asked me in my attorneys' office, prior to trial, if I knew of an exempt list, and I have heard testimony in court. I never heard of such list before. We do not use sash. Occasionally, we might use a door in an installation. We might make a door ourselves where, for instance, in a cocktail lounge if somebody would require a door or a cut-out fixture. We have had three or four doors in that line and, I think, we may have bought maybe four or five doors to fit in where we were repairing something.

JOSEPH LOUIS EMANUEL

called as a witness for the defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Faulkner:

I am a defendant and president of defendant L. & E. Emanuel Company. The firm has been in existence 88 years. I have been president a little

(Testimony of Joseph Louis Emanuel.)

over 50, only. I was president from 1936 to 1940. Our average men employed is nearly 70. [568] Among the 70 employees are members of millmen's unions 550 and 42, who were employed during the period from 1936 to 1940. During that period our business was to design and fabricate high-class store premises. Much veneer wood is used. We plan a store from its source and equip it to the point where we turn it over to such customers as Magnin's and Ransohoff's. The type of a store for ladies ready-to-wear. We design and appoint clubs, night clubs, banks and bar fittings. We study out the color scheme complete to the floor coverings and turn the store over in its complete entirety with all the different elements that go to make up a complete store. In carrying out our business, we use lumber products. The world is our field in getting such products. We have Norwegian Alpine, Siberian Oak, Brazilian Rosewood, Cocobolo from the Panamanian section, Prima Vera from Mexico, domestic woods from the South and East, Indiana and so on. Soft woods and a generous percentage comes from the North, such as Washington and Oregon. During the preceding ten-year period that would come into our establishment in the form of rough lumber and veneer and plywood. A very small percentage of lumber referred to here as smoothed and surfaced. We do not sell the lumber products to anybody in the form in which we receive them. We use them in the conduct of our business.

(Testimony of Joseph Louis Emanuel.)

The lumber products used are divided into soft wood and hardwood. We do not use any soft wood in the conduct of our business upon which any milling act has been performed in the San Francisco Bay Area.

“Mr. Faulkner: Q. In the period from 1936 until 1940, June 26, the date of the return of this indictment, have you ever had any person, whether a union representative or purporting to be a union representative, or a member of any union group, or of your own group, suggest to you where you should buy any lumber product in any form?

“Mr. Burdell: Object to it as immaterial whether or [569] not this witness has heard that.

“The Court: Sustained.”

During the four-year period mentioned, neither we, nor I, entered into any oral agreement with any person, firm or corporation or any union representative, concerning or on the subject of where or where we should buy or how we should buy any lumber product that entered our establishment. I never knew of any such agreement that related to the cabinet manufacturing industry. During the period 1936 to 1940 material that came into our establishment ordinarily did not bear a union label. No member of Millmen's Unions No. 550 or No. 42 ever refused to work on any material in our establishment during that period of time. No carpenter employed ever refused to install any article fabricated in our shop from material that didn't have a union label.

(Testimony of Joseph Louis Emanuel.)

“Q. Did you ever have any dispute of any kind, character or description with any person on the subject of the type of material that you were using, or the source from which the material came?”

“Mr. Burdell: Immaterial, your Honor, whether or not he had any dispute. I object.

“The Court: Sustained.”

During the period from 1936 to 1940, my corporation was a member of Cabinet Manufacturers Institute and the Commercial Fixture Institute. I just represented the firm and was not personally a member. I know Mr. J. G. Ennes and did during the period 1936 to 1940. I know the position he held in the Cabinet Manufacturers Institute and the Store Front Institute, and would say that he was the whole show. He was with the industry of which I was a part for some years prior to 1936. Members of the Cabinet Manufacturers Institute first commenced its negotiations with organized labor with respect to hours and terms of employment, twenty years prior to 1936. In the 20 years prior to 1935 there were negotiations carried on with unions concerning employment. [570] Immediately prior to 1936, they were in 1935. I recall the circumstances that caused the cabinet manufacturers to negotiate with organized labor in 1935. I think they had a written agreement in 1935. I participated in labor negotiations in 1935 directly with union representatives. In 1936, I did not participate personally in any negotiations with organized

(Testimony of Joseph Louis Emanuel.)

labor. I did not at any time subsequent to 1936 participate in any negotiations with organized labor concerning any contract and know of such contract only by hearsay. Agreements were made with organized labor in 1936 and subsequent, with various unions employed by our industry. I did not see any of the contracts entered into subsequent to 1935. I saw a contract indicating the rate of wages to be 80 cents an hour or \$6.40 a day. That was stepped up to \$7.40 a day, and some specific arrangement had as to what compensation would be received by the manufacturers who entered into a legitimate contract prior to or during the period in which the negotiations were taking place. I do not recall when that contract was entered into. I did not personally negotiate it, but I saw a contract along the lines indicated. I think the wages of the members of millmen's unions 550 and 42 varied—from 1936 to 1940—from \$7.40 to \$8, then finally to \$9 and back to \$8.50. The scale of \$9 was for a week or less.

During the period 1936 to 1940, we employed union men belonging to other crafts. During the same period their rates of wage were likewise changed. I don't think I saw any of the contracts entered into in 1938. I did receive information concerning changes in the rates of wage in that year, from Mr. Ennes. During the four-year period covered by the indictment, our company paid whatever changes were made in the rate of wages of the millmen's union.

(Testimony of Joseph Louis Emanuel.)

In the years 1926 or 1937, our firm did work for Roos Bros. I recall the general work that was being done. Grand [571] Rapids Company did the sports shop on the first floor—they claimed 95 per cent of it. I did not bid on that work. Until I came to court, I did not know the amount Grand Rapids received for that work. We did bid on other parts of the work and had some of the work awarded. The top floor, generally called the fifth floor, we undertook a contract \$18,900. We made that installation. I know a man named Hosken who represented the Grand Rapids, and talked to him. My recollection is that I told Mr. Hosken that I had been on a negotiating committee with the unions prior and that their demands were excessive and we beat them. That was in 1935. I did not have any conversation with Mr. Hosken in which I indicated or stated to him I had been on any negotiating committee in 1936, because I was not. I did not have a conversation in which I said that any agreement on the wage scale, that it was the object of the union that they would not allow outside manufacturers to come in, and that the union would not install that equipment that came from where the wage scale was lower than the wage scale prevailing in the San Francisco Bay Area. I did not have any conversation similar to that with Mr. Hosken, because the fact that Mr. Hosken's work was set up by union labor would indicate that that was not a correct statement. I did not hear Mr.

(Testimony of Joseph Louis Emanuel.)

Hosken's testimony. I was chosen by Roos Bros. to sit in conference at meetings which took place once every week in Mr. Roos' office, where generally present were Mr. Williams, Mr. Fairweather, who was the architect with the Phelan interests who were making the physical changes in the building itself, then there was generally present Mr. Roos, Mr. Kline, Mr. Berkoff, Mr. Parker, and they would bring occasionally in such men whose experience would help us in our problem to lay out a store that would be the last word in color and proper correlation, the bringing of light to be used to the different parts, the arrangement of salesrooms for stock and so on. On several occasions Mr. [572] Hosken was consulted regarding the layout of the first floor—the men's sports section, as that firm had specialized considerably in that particular regard. I would say I had practically no conversation with him about unions or wages or negotiations or agreements, or anything of that kind, but I might add that I could have said, and no doubt did, "Watch your step, a little bit, the unions are upsetting things, the Grand Rapids were generally known to be in bad repute with the union." Something to that effect is what I think I may have said to him. In November, 1937, at the time of this claimed conversation with Mr. Hosken, I knew they had just concluded installation of the men's sports wear. Further knew at the time of that conversation I did not negotiate the 1936 agree-

(Testimony of Joseph Louis Emanuel.)

ment, but had participated in a 1935 agreement. In the 1935 agreement, there was not any discussion about either the exempted list or working off union label goods in this area.

"* * * Do you know, Mr. Emanuel, whether or not in 1935 that was the first occasion that organized labor, after a period of practically fourteen years was able to get a union contract with employers in this district?

"Mr. Burdell: Objected to as immaterial.

"The Court: Sustained.

"Mr. Faulkner: I think it is material to show that organized labor was emerging.

"The Court: I think it is immaterial.

"Mr. Faulkner: Your Honor will not permit me to—

"The Court: No. I do not wish to consume too much time in listening to argument. I would like to have you put in the evidence as rapidly as possible.

"Mr. Faulkner: Don't you think that it is important in this case to show that there was a definite change?

"The Court: I think that my ruling is correct and it stands. Proceed with the examination." [573]

Cross-Examination

By Mr. Burdell:

I stated we employed about 70 men. The number of carpenters fluctuates. The average is probably

(Testimony of Joseph Louis Emanuel.)

25 carpenters. I don't know how many are members of local 42. I don't know whether the carpenters belong to 42 or what union they did belong to. If you ask me how many of them are union men, I would say all of them.

In 1935, when I negotiated the contract I didn't know what union they belong to. I negotiated with union labor. My recollection would be we met with Mr. Kelly, Dave Ryan, Mr. O'Leary, Mr. Wilcox and possibly a few others. I do not know what union Mr. Kelly or Mr. O'Leary belong to. I think Mr. Ryan belongs to the District Council—I could not tell you. I only knew they belonged to a union. I stated the 25 are carpenters, but cabinet makers going out into the field immediately are recognized as carpenters by reason of the fact that they are in the field and have an increased wage, although they have not changed their union. I do not recall the negotiations in 1936. My testimony was I knew there were negotiations in 1936, but I took no part in them. I did not attend any of the negotiations as a visitor nor did I talk to anyone about them. I did not talk to Mr. Ennes about any of the negotiations. I did not talk to Mr. Hart about any of the negotiations in 1936. I did not talk to Nat Edwards in 1936 about the negotiations. I know there was a contract entered into in 1936. I did not know there was a contract entered into in 1938. I heard of negotiations and know that a contract was entered into following the negotiations, only by hearsay. I have never seen the contract. I think

(Testimony of Joseph Louis Emanuel.)

the only contract I saw was right in this courtroom. I did not see one before then. I have seen no contract regarding the 25 carpenters. The rates of wage of those [574] carpenters are determined by Mr. Ennes and the committee with whom he met. He negotiated all of the arrangements or the contracts relating to the rate of wage, with labor being represented on the other side. When the wage scale was concluded it gives the hours of work, how much they would receive for overtime and what would constitute overtime. I got information with regard to all of that from Mr. Ennes. He has telephoned to us if I needed that information. I knew when a rate of wage was to be changed because it ran from one period of time to another—generally May 1st. We generally had telephone calls from Mr. Ennes indicating either one side or the other is objecting to continuing on with the same scale and that generally takes place approximately 60 days before determination of the contract. I recall no conversation or discussions with Mr. Ennes at the time of the termination of the contract, but I might have had. I knew whether or not the rate of wage was to be changed, but Mr. Ennes called up generally advising us ahead of time to watch our steps, "You may get hooked, it is time to consider the termination of the old agreement." He later on called to say that rates had been changed. He told that over the phone. The hours had not been changed any. He told me they have not changed. The same as to overtime. I learned about these

(Testimony of Joseph Louis Emanuel.)

changes from Mr. Ennes. Not necessarily over the telephone—I might see him personally. Sometimes the overtime rates come on for two sections and sometimes they changed at the time of the termination of one contract and commencement of another—I am interested in determining whether there is any change in the overtime rates. We learn that from Mr. Ennes at the commencement of a new contract. Not necessarily over the telephone. I did not have separate meetings to learn about these overtime rates. I mean, substantially, that he called me up and told me about all three at the same time. I know whether some of the 25 carpenters got wages different from the others. Mr. Ennes does not tell about [575] two different wage scales. The distinction between wages that our twenty-five carpenters get is entirely up to me. We pay some more for longer service or more for experience, or the equivalent. As far as information from Mr. Ennes is concerned, they all get a minimum wage. The union does not change holidays from one contract to another. At the commencement of each contract, we have to learn whether or not there are any changes. We learn that from Mr. Ennes over the telephone, or meet him, personally. I, personally, have nothing to do with the payroll. The bookkeeper makes it up. We indicate all men get the minimum scale. Then there is Mr. Smith, Mr. Brown and Mr. Jones, and they get 50 cents bonus and this one gets \$1. All the bookkeeper is told is the minimum wage plus what we call the

(Testimony of Joseph Louis Emanuel.)

key men. We have apprentices. I know there is a rule that provides so many apprentices is part of the agreement that Mr. Ennes negotiates. All of the information pertaining to that could be given to me in maybe two minutes' time, whereas these questions would indicate it was a very involved proposition. It simply involves a minimum wage of carpenters, \$8 a day, or whatever it may be, and that takes in all the mechanics, because they all work from there, and indoor employees get \$1 less than outside men. All the men on the inside cabinet work get the same rate, there being an exception in the case of men who are incapacitated, who are too old to work, they get a special dispensation, and all this discussion could take place between myself and Mr. Ennes in probably one minute's time—maybe two at the absolute outside. Inside mechanics are men that work in our shop—cabinet makers and millmen finishers. Men working in the field are paid \$1 extra, but a cabinet mechanic or finisher takes this rate of wage when he works in the field. The field may be inside, but it is not inside our factory. Men installing work are classified as outside men, they may be inside, they can be finishers or [576] cabinet makers, but they take the outside scale. There is no distinction of the 25 carpenters into inside mechanics and outside mechanics. When I speak of outside men, I speak of a man who is not working in our factory. He might be working in this building. He is inside, but he is on the field and in that event he becomes a car-

(Testimony of Joseph Louis Emanuel.)

pen~~t~~er so far as wages are concerned. I just explained there is a difference between wages paid inside men and outside men. There is no distinction between carpenters' wages. A carpenter does not come into the cabinet shop and take a lower rate of wage. They are not all carpenters. Cabinet makers go outside. Whether a carpenter is outside or inside ~~he~~ gets an outside scale. As I understand it, belonging to the carpenters' union he gets his nine or ten dollars and pays the fee. A cabinet maker gets a lower rate of wage at our shop, and he takes on a dollar a day increase when he works on what we call the outside field. I do not call a cabinet maker a carpenter. Some of the 25 men I have been talking about are woodworkers. I did not take part in the negotiations meeting up to the 1938 contract. It is right that I never saw that contract until the time I entered this court room. I did not say one was never sent to our plant. My testimony is that although one might have been sent to my plant, I never saw it. During the normal procedure one sent to our plant would have been received by my brother-in-law. I cannot say who did see it in the normal course of procedure. My brother-in-law has since passed on. He had charge of the office. I am not in the office at all. I am in the drafting room. I don't know what my brother-in-law might have done with the contract. I know one of these contracts found its way to L. & E. Emanuel Company, but don't know what became of it after it got there. I could not say if it was

(Testimony of Joseph Louis Emanuel)
used in making up the wage payroll, or in answering the questions about apprentices. I did not even know we had it. I know now we had one because we produced it. I do not know if the 1936 contract [577] was ever sent to my company. I do not know it was not sent. I know there was a contract negotiated in the summer of 1939 by Mr. Ennes only by hearsay. To the best of my recollection, Mr. Ennes told me. He told me about the 1938 one and I assume about the 1936. I do not know whether he sent a copy of the 1939 contract to our plant and do not know that he didn't. I did not take part in the negotiations of 1936 leading to the execution of the contract regarding the rate of wage of the millmen. I did engage in negotiations in 1935. I am quite clear it was 1935 and not 1936. I did not have any meeting with Mr. Hart or Mr. Edwards in 1936.

That is my signature on page 2 of Exhibit 179 for identification. I do not recognize the other two signatures there they purport to be J. A. Hart and Mr. Edwards. It could be Nat Edwards. The other could be Jack Hart—J. A. Hart. I am not saying it is or it is not. The document does not refresh my recollection as to whether I engaged in any negotiations relating to a labor contract of 1936. It is still my testimony I did not engage in any negotiations in 1936. I did not say I did not meet Mr. Hart. I said I did not negotiate. I had meetings with Mr. Hart, but I didn't negotiate wages with him. I did have a discussion with him regarding

(Testimony of Joseph Louis Emanuel.)

wages, what we would like to pay labor. There was discussion with Mr. Edwards. I do not think I would call them negotiations. There were discussions, meetings and conversations, talking about labor and labor rates. I delegated Mr. Ennes to attend to negotiations with labor. I did have meetings with Mr. Edwards and Mr. Hart about labor rates. We discussed it. The document does not refresh my recollection about that. I do not even know what the document is.

Thereupon the document was introduced in evidence as U. S. Exhibit No. 179. [578]

"This is dated August 19, 1936.

"Predicated upon a Union Shop condition, in order to effect a settlement of the Wage Rate now before the Board of Arbitration,

"WE SUBMIT TO:

BAY COUNTIES DISTRICT COUNCIL OF
CARPENTERS MILLMEN'S UNION NO.
42 and NO. 550

the following offer:

"Rate of Wage to be Ninety-two and one-half cents ($92\frac{1}{2}c$) per hour, retroactive to June 28, 1936, and shall be applicable to all work, except where contracts have been entered into, or where Bids have been submitted prior to June 28, 1936, which work shall be done at the Rate of Wage as set forth in the Agreement of June 27, 1935. The Rate of Wage for stock sash and doors will be eighty-two and one-half cents ($82\frac{1}{2}c$) per hour.

(Testimony of Joseph Louis Emanuel.)

“This scale of wages will be paid up to March 15, 1937. From March 15, 1937 to June 15, 1938, the above mentioned scale of wages will be One Dollar (\$1.00) per hour. The rate of wage for stock sash and doors will be Ninety Cents (90c) per hour.

“Eight (8) hours shall constitute a regular work day. The regular work day shall be between 8:00 a. m. and 5:00 p. m. Five (5) days shall constitute a regular working week from Monday to Friday, inclusive.

“Time and one-half shall be paid for all over-time after the regular work day period of eight (8) hours, except when double time shall be paid, and except that time and one-half shall be paid for work on Saturday from 8:00 a. m. to 12:00 o'clock noon. No work shall be done on Saturday from 12:00 p. m. until 12:00 a. m.

SAN FRANCISCO WOOD
PRODUCTS ASSOCIATION,
J. A. HART.

CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA,

JOSEPH L. EMANUEL.
BUILT-IN FIXTURE MANU-
FACTURERS

EAST BAY MILL OWNERS
ASSOCIATION,

D. N. EDWARDS.” [579]

(Testimony of Joseph Louis Emanuel.)

I signed this. I am a little hazy about that being Nat Edwards. I think there are three Edwards. There is Shorty, he is a union man; Nat Edwards is the Lumber Products, and, I think, there are three Edwards. I do not recall meeting with Mr. Edwards in 1936 where we discussed the substance of what is contained in that document very vividly. My recollection about meeting with Mr. Hart to discuss the substance of what is contained in the document is very vague. The Unions were making demands for a greater wage and we in turn felt that the Bay Area could not afford to add this, and we submitted what we considered was a compromise and what we thought was quite generous at the time. We had presented a statement to the Union as to what we were willing to do. Evidently, Mr. Hart and Mr. Edwards and I got together and got up that statement. I assume they sent it over to the Union. I don't know how many meetings I had with Mr. Hart and Mr. Edwards about that. After we sent that to Millmen's Unions 42 and 550 Mr. Ennes took over. It doesn't refresh my recollection a bit as to the Unions my employees belong to. We addressed that to Millmen's Unions 42 and 550. One of those Unions is across the Bay. We have men on both sides. We do work on both sides and along the entire Pacific Coast. I have just one plant, and one too many. I have no recollection I sent it to the union. I thought that after I signed it the unions would receive it. After Mr. Ennes took

(Testimony of Joseph Louis Emanuel.)

over negotiations he handled the whole thing as far as I was concerned. He did not make any report to me about the progress of his negotiations, either in the year 1936 or 1938. I would not say no report whatsoever. He told me about the wage rate when it was concluded, but not during the negotiations. In 1939, he didn't report to me concerning progress of the negotiations. I knew in 1938 negotiations were in progress for approximately two months, resulting in the wage scale. I think I probably would know negotiations were in progress in 1939, relating to the wages. During those two months he made no reports to me concerning progress of the negotiations. I was very muchly interested in this problem. [580] The reason I took part in the meetings with Mr. Hart and Mr. Edwards in 1936 was because I was selected. I was very muchly interested but that was not the reason I was selected. In 1935, I was on the negotiating committee and I was interested then. That I never got any reports from Mr. Ennes concerning the progress of his negotiations was not a lack of interest. If you know what a clam is you know how much you can get out of Mr. Ennes. I didn't ever try to get anything out of him. The only thing I was interested in was dollars and cents in days' wages. The Unions indicate to us how much they want. I know perfectly well when I am paying \$7.50 a day and they ask for \$8.50 they do not mean any more than that, so it is my conclusion that while these

(Testimony of Joseph Louis Emanuel.)

negotiations are going on I am perfectly safe in figuring on their figures, and nine times out of ten maybe, the unions ask for more than they expect to get. When they ask for \$8.50 maybe they expect they will split the difference and take \$8, so during the period of negotiations I will either figure to pay the full amount they have asked or maybe compromise it mentally and do my figuring accordingly. I am not by any manner or means disinterested—it is vital, most important, but what is the use of talking to Mr. Ennes about "What are you doing?" He couldn't answer that. It is true I use my own judgment as to what I think it might be and sometimes I win and sometimes I lose, but I am vitally interested and very definitely so. After the negotiations, I got the information by telephone or meeting with him.

I don't recall having ever seen Exhibits 94-2, 93-3, 94-3, from the files of my company.

In 1936, on this agreement we referred to and discussed, but we did not meet with labor. I would say I didn't prepare it—it doesn't sound like my language, but I did sign it. [581]

Thereupon three letters were introduced in evidence as "U. S. Exhibit No. 180", being formerly 94-2, -3, -4, for identification, and were read to the Jury as follows:

(Testimony of Joseph Louis Emanuel.)

“Bay Counties District Council of Carpenters, San Francisco and Vicinity.

April 11, 1938.

“Mr. J. C. Ennis, Secretary
Cabinet Manufacturers Institute
of California, Northern Division

Mr. F. S. Spencer, Chairman
Lumber Products Association of
San Francisco

Mr. D. N. Edwards, Chairman
East Bay Mill Owners Association

“Gentlemen:

“The agreement now in effect between your three associations and the Bay Counties District Council of Carpenters Millmen’s Local Union 42 of San Francisco and Millmen’s Local Union 550 of Alameda County, stipulates (paragraph 24) ‘it shall be subject to change, modification, or termination by either party (after June 15, 1938), upon 60 days notice being served in writing upon the other party.’

“In accordance with the provision we have quoted, you are hereby officially notified that the Bay Counties District Council of Carpenters, acting both for the District Council of Carpenters and for Millmen’s Unions 42 and 550, all signatories to the agreement, that it is our desire and request that certain changes be made in our agreement.

“We are making our request at this time so that we may have ample time to arrive at a mutually satisfactory adjustment of the present agreement before June 15, 1938.

(Testimony of Joseph Louis Emanuel.)

'May we respectfully suggest, in order to promote the establishment of conditions of employment in Santa Clara County and Contra Costa County identical to the conditions that may be established in the San Francisco Bay Counties, that you [582] invite representatives of the employers in these two adjacent counties to participate in the conferences in the establishment of our new agreements. We are referring specifically to the Pacific Manufacturing Company of Santa Clara County and the Redwood Manufacturers Company of Pittsburg.

'We ask that our representatives be afforded an opportunity to meet with representatives of your organizations at your earliest convenience.

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS.

D. H. RYAN, Secretary.'

Then 94-2 is on the letterhead of the Bay Counties District Council of Carpenters and is dated January 31, 1940, addressed to:

"L. & E. Emanuel
2665 Jones St.
San Francisco

'Dear Sirs:

"Our present agreement with you covering hours, wages and working conditions of the cabinet makers and millmen in your employ stipulates (see

(Testimony of Joseph Louis Emanuel.)

Paragraph Thirty-four) that either party to the agreement may, by serving notice in writing upon the other party, enter into discussions regarding any proposed changes or modifications in the agreement to be effective May 1, 1940. This is to officially notify you that the Bay Counties District Council of Carpenters and the Millmen's Unions affiliated therewith desire to discuss with you or your representatives, and if possible negotiate, certain changes in our agreement.

"We would appreciate it if you would notify us what time and place would be convenient to you to meet with our representatives to discuss this matter.

"With best wishes, we remain, [583]

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary.

—With a stencil signature, "D. H. Ryan."

94-4 is on the letterhead of Bay Counties District Council of Carpenters, dated July 21, 1938, addressed to:

"To All Planing Mill Owners and Cabinet Manufacturers in the San Francisco Bay Area Including the Counties of San Francisco, Alameda, San Mateo, and Marin.

"Gentlemen:

"The Agreement between the Cabinet Manufacturers Institute of California, Northern Division

(Testimony of Joseph Louis Emanuel.)

and the Lumber Products Association, Inc., representing practically all of the Cabinet Manufacturers and Planing Mill Owners in San Francisco, and the Bay Counties District Council of Carpenters, Millmen's Union No. 42 of San Francisco and Millmen's Union No. 550 of Oakland, representing the employees has been renewed with no material changes except for an increase in the wage scales. The wage scales for the ensuing year terminating May 31, 1939 were determined by an Arbitration Board, the Chairman of the Board being Judge Walter Perry Johnson who was selected by the Conference Board of the San Francisco Building Trades Employers Association and the San Francisco Building Trades Council. The wage scale for Journeyman Cabinet Makers and Millmen is established at \$1.12½ per hour for an 8 hour day and 40 hour week except in stock sash and door departments, where the scale is established at \$1.00 per hour. The effective date for the new wage scale to become effective is June 15, 1938, with the following stipulation (we quote here from Paragraph 9 of the Arbitration Award): 'The award shall be effective on all new work contracted for after June 15, 1938 subject however, to the proviso (due to unanticipated postponement of this arbitration proceeding) that where bids have been submitted and opened prior to July 10, 1938, and have [584] been based upon the old wage scale, no protection as to such listed bids shall be afforded, unless they shall

(Testimony of Joseph Louis Emanuel.)

have been accepted by the Awarding Authorities on or before the 30th day of July, 1938, which date is fixed as the time from and after which the new agreement shall become and be effective and binding on the parties thereto.'

"If you have work on hand or work in prospect on which your bid has been accepted and on which you expect to be protected, it is necessary that you advise the Bay Counties District Council of Carpenters of the amount of such work and the name of the contractor, builder or owner for whom the work is to be done not later than July 30, 1938.

"Representatives of our organization will be very glad to meet with you at your earliest convenience to take up with you any questions concerning this new agreement and to adjust any questions that might arise in connection with it.

"In conclusion, we desire to take this opportunity to thank you for the cooperation you have given our organization in the maintenance of amicable labor relations in the cabinet shops and planing mill industry and to assure you it is our earnest desire to continue to work in cooperation with you.

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS

D. H. RYAN,

Secretary'

—With D. H. Ryan's signature stenciled.' "

(Testimony of Joseph Louis Emanuel.)

Redirect Examination

By Mr. Faulkner:

According to my recollection labor negotiations had been going on on the 19th of August, 1936, between Mr. Ennes and members representing Millmen's Unions 550 and 42. [585]

I have no recollection of having seen Exhibit 179. There is no dispute that that is my signature. At no time as President of L. & E. Emanuel Company did I know any more about the matters that were being negotiated by Organized Labor than is indicated in that paper that has my signature. The entire extent of my knowledge of the matters in negotiation between employers and employees was the rate of wages, the time wages became effective, payment for overtime and what constituted a working day.

Mr. Ennes advised me from time to time on the progress of the negotiations with respect to the rate of wages and the hours and overtime. The letter that bears my signature is an accurate resume of the extent of my knowledge of the subject matters that were in dispute with Organized Labor at the time the letter was sent. The paper does not refresh my recollection on having discussed the matter of labor negotiations with Mr. Hart or the other signer of the letter, Mr. Edwards. I was in Court when an employee of mine produced the papers just read by Mr. Burdell. I didn't go through those files before the employee produced them here. I didn't

(Testimony of Joseph Louis Emanuel.)

give them any instructions under the subpoena. Mr. Fisher, my son-in-law, gave the instructions, he is practically in charge of the office. I never read the letters, Exhibit 180.

Recross Examination

By Mr. Burdell:

The photostat does not refresh my recollection concerning conversations with Mr. Hart and Mr. Edwards. I still do not remember those conversations. I do remember that the substance of the document is all that I knew at that time in 1936 about wages, hours and other working conditions of labor. [586].

LEO ROSELYN,

being previously sworn, was recalled for cross-examination:

By Mr. Zirpoli:

I think I have the order covering the remainder of the matters listed in the Invoice, Exhibit 178. These invoices that are on Exhibit 178 have an order number in the content of the invoice and as that order number occurs, I received from the party mentioned below the instructions as to the fulfillment of that order. Those orders were written up in our own hand, but they were written on verbal instructions obtained from the party whose name appears on the invoice and they were written at

(Testimony of Leo Roselyn.)

the time the instructions were received. These are all dated September 6, 1938.

Thereupon the orders were introduced in evidence as "U. S. Exhibit No. 181".

I think in that group there are some installation orders, but they were verbal also, I don't think they are pertinent. They are pertain to the South San Francisco store of J. C. Penney.

Letter dated September 16, 1938, addressed to J. C. Penney Company, signed H. Werdesheim, was thereupon introduced as "U. S. Exhibit No. 182."

Thereupon the witness produced a letter which was introduced in evidence as "U. S. Exhibit No. 182", and was read to the Jury as follows:

"This is a letter dated September 16, 1938:

"J. C. Penney Co., Inc.,
330 West 34th St.,
New York, N. Y.

Att: Mr. Frank Rich,
Traffic Dept.

Re: New Store #1539—So. San Francisco

"Gentlemen:

"We were unable to deliver your Order #49666 for the above [587] new store on September 12th, as there were some fixtures sent from your Vacaville Store on the date named for our fixtures delivery. The Vacaville fixtures were set in the center of the store by the draymen, and until our men had installed them our own fixtures would only have

(Testimony of Leo Roselyn.)

been in the way. Therefore, our fixtures will be delivered immediately upon receipt of orders from our Foreman on the job to do so.

"Trusting the above is in order, we are,

Yours very truly,—

UNIT-BILT FIXTURE CO.

By H. WERDESHEIM."

Mr. Faulkner: So that the examination of Mr. Roselyn is intelligible, will you follow me, Mr. Zirpoli?

Mr. Zirpoli: Yes.

Mr. Faulkner: The exhibits that went in on November 26 on Exhibit 178, which is the invoice of the Unit-Bilt Fixture Company, contained a series of items and in the right-hand corner there is a reference to the order number and the name of a man who gave the order, Mr. Williams, 3196; Mr. Williams, 3195; Mr. Williams, 3197-8. Then the order produced by Mr. Roselyn this morning, they are all dated September 6, 1938, relating to the Penney Company—there is an order number, and the order numbers on these sheets which are similar to the order numbers on the invoices cover substantially the same thing.

Mr. Zirpoli: This is correct."

CHARLES STAUFFACHER.

called as a witness on behalf of the defendants, was duly sworn, and testified as follows:

(Testimony of Charles Stauffacher.)

Direct Examination

By Mr. Faulkner:

My business or occupation is manufacturer of bank, [588] store and office fixtures and general contract. I have been in that business personally forty-two years. I am president of Fink & Schindler Company, was such between 1936 and 1940. I am not an officer or director of Commercial Fixture Institute. The firm of Fink & Schindler is a member of the Commercial Fixture Institute and was since practically the commencement of that corporation. Prior to that we were a member of the Cabinet Manufacturers Institute. In that connection I knew Mr. Ennes and prior to that had a personal relationship with him in the affairs of Fink & Schindler Company.

During the period engaged in that business we have required a great many materials, among them, lumber in various forms. Between 1936 and 1940 we bought lumber from local dealers and also occasionally carload shipments from the East and North. When buying through local dealers in most cases we know the source of the lumber received. The soft wood in most cases comes from the Northwest, the Northern States, such as Oregon and Washington, and the hardwood lumber mostly comes from the Southern and Midwestern States, or foreign countries. About 80 per cent. of the lumber used in our business is hardwood, in dollars, compared with any other lumber used. About 20 per

(Testimony of Charles Stauffacher.)

cent. of our lumber material would be soft wood. Of the soft wood material none has any milling process performed on it in the San Francisco Bay Area after it is shipped in.

In the year 1936 there was no change in the method of our buying lumber material. In the year 1936 and subsequent to that time I never had any agreement with any Union man or Union Official with respect to, or on the subject of, from whom and at what time or at what place I should buy our lumber material. I never had any discussion that related to that subject matter with any Union officer or agent in that entire four year period. [589]

In the course of our business I employ men who belong to Millmen's Union 42 and 550. Those are not the exclusive union men employed by me. In the years 1936 to 1940 we employed carpenters. I know in the year 1936, an agreement was entered into with reference to the employment of men who belonged to Millmen's Unions 550 and 42. I did not negotiate that agreement with the Union. Mr. Ennes did.

The average men employed in our business during 1936 to 1940 is approximately fifty. In comparison there would be about forty millmen of those employees, and about ten carpenters, on an average. I think it was the same agreement with the carpenters.

During the period of 1936 there was never presented for approval the form of any contract with

(Testimony of Charles Stauffacher.)

the Union. I did not receive from Mr. Ennes a copy of any agreement that was entered into by him. I have never read the agreement of 1936. I know it had to run up to 1938. The final agreement was entered into in August or September of 1938, I did not receive a copy of that agreement. In 1936 I was advised of the change in the rate of wage by Mr. Ennes. I know in the year 1938 there were changes made in the rate of wages through Mr. Ennes. I did not receive any copies of the 1938 agreement, to my knowledge. I have never read the terms of any document that purports to be a contract between Cabinet Manufacturers Institute or Commercial Fixtures Institute and Millmen's Unions No. 550 and 42.

Cross-Examination

By Mr. Zirpoli:

I have been President and Director of Fink & Schindler Company during 1936 to 1940. I knew the 1936 agreement was being negotiated by Mr. Ennes and that he was representing me as a member of the Association. That is my signature [590] under the name of Fink & Schindler Co. on the last page of Exhibit No. 67, it was written by me at that time. I remember appearing there with other members of the Institute for the purpose of signing this document indicating membership in the new Institute. I was there and participated in the meeting. I know what Cabinet Manufacturers Institute,

(Testimony of Charles Stauffacher.)

Northern Division, was and was a member of that Association. It was predecessor of Commercial Fixture and Store Front Institute. I never attended a meeting of Cabinet Manufacturers Institute at which labor contracts were discussed. I do not recall any special meeting for that particular purpose. I do not recall any meeting that I attended of the members, in which negotiations with labor were discussed.

I do not know Mr. Strong personally. In 1936 there was an audit made of our books as a result of the relationship between the Cabinet Manufacturers Institute and the labor unions with relation to the wage scale on the new contract. I was present when the man came there to make the audit and recall his coming. I had a conversation with him at that time. The contract was not discussed. It was not produced. I know the purpose of his audit. We were requested to make out a list of jobs that we had contracted for prior to a certain date, and establish the number of hours that we assumed would be required to complete those particular jobs. I made out that list and he came down and checked that list with me. I do not recall the exact date, it was a certain date we were notified by Mr. Ennes that all jobs prior to that would be adjusted with the Unions. I think he notified that that was the date agreed upon in the contract. I knew it was the date that appeared in the 1936 contract. I knew in 1938 a similar audit was made with rela-

(Testimony of Charles Stauffacher.)

tion to the adjustment of the wage scale as to another date. That date was also a date from the contract newly made, which I knew at the time.

[591]

Redirect Examination

By Mr. Faulkner:

I don't recall of ever having seen Defendant's Exhibit "L" before. I do not recall whether that came into our place of business or not.

OSCAR H. OSTLUND,

called as a witness for the defendant, being duly sworn, testified as follows:

Direct Examination

By Mr. Faulkner:

I now conduct individually my business under the name of Ostlund & Johnson. The firm of Ostlund & Johnson has been in existence since 1909, in San Francisco. From 1936 on, at least, I conducted that firm individually under that name.

The business of the firm is designing, manufacturing and installing complete store equipment, including floor coverings, painting and whatever is necessary to do business in the place. I use various types of material, all kinds required in buildings. I use materials from practically every state in the United States and all over the world.

(Testimony of Oscar H. Ostlund.)

I will say probably 15 per cent of the lumber is soft wood and 85 per cent is hardwood. Those proportions would average up throughout the years. Practically 99 per cent of the hardwood emanates from places without the State of California. Most of the soft wood, I think, comes from Oregon and Washington. We use a lot of redwood. I do not buy any soft woods that have had any milling process performed on them within the San Francisco Bay Area. Practically all, outside of the stock panels, I buy in the rough state, just sawed lumber. Milling was performed in my own place. A very small portion [592] comes into my shop with any milling act on it. Substantially all is rough lumber.

I employ millmen who belong to Millmen's Unions 550 and 42, and did from 1936 to 1940. My firm employs between forty and fifty men. The average of millmen differs from time to time. When we manufacture and prepare the fixtures we employ millmen and when we install them we use carpenters. I suppose the carpenters I employ are members of Millmen's Unions 550 and 42, I don't ask them. I pay a different rate, it is higher than the millmen's rate.

From 1936 to 1940 I was a member of the Cabinet Manufacturers' Institute and later became a member of Commercial Store Front Institute. I became a director and treasurer of Commercial Store Front. I probably was treasurer of Cabinet

(Testimony of Oscar H. Ostlund.)

Manufacturers Institute also, a short time. I was treasurer of Commercial Fixture Institute after its incorporation. I was a member of both of them.

I know J. G. Ennes. Mr. Mullen was president of the Commercial Fixture Institute during the entire time. Between 1936 and 1940, I did not ever negotiate any contract with Union Labor, or with respect to any union man employed in my shop. I never had submitted for approval or any purpose, the form of any proposed contract or actual contract purporting to be a contract between members of Cabinet Manufacturers Institute and Millmen's Unions 550 and 42. I have been in Court every day and heard the contract referred to, a contract in 1936 and various contracts in 1938. None of those contracts were ever submitted to me for inspection.

In the year 1936 I was told a contract was entered into with respect to the terms of employment of the men employed by me in millmen's unions 550 and 42. I got a message, by phone, I guess, the wages that were to be paid after a [593] certain date was a certain amount and I transferred that to the paymaster, and that is all I remember about it. I got that word from Mr. Ennes.

I don't recall any conversation with Mr. Ennes during the progress of those negotiations, except Mr. Ennes had told me from time to time they were working on that with the Union. That is the best recollection.

I knew in 1938 there were negotiations going on

(Testimony of Oscar H. Ostlund.)

with respect to fixing an agreement with men employed in Millmen's Unions 42 and 550 with my cabinet shop. I received advice of the terms of employment of those men from Mr. Ennes. I really don't recall in what form, because Mr. Ennes, if he told me, he called up and said after this date I have to pay the mechanics a certain wage, and I told my paymaster or bookkeeper, whoever was there, what the new scale to the employees was. The men employed knew when their wage rate was changed because they wouldn't hesitate at all to tell us that, "Tomorrow we get more money."

I would hardly say I could remember any report on the progress of negotiations in 1938 from Mr. Ennes, excepting the general things that he was working on an agreement with labor. No one ever advised me whether a labor representative, or member of my own group, that any agreement had ever been entered into as to from whom I was to buy any materials. No one told me that under any arrangement of any kind with the Unions I was to buy my milling lumber from firms and corporations doing business in the San Francisco Bay Area.

In the period from 1936 to 1940, I didn't suggest to anyone in my employ, or to any other person or corporation, from whom they would buy any lumber material of any kind. There was no difference whatever as to my method of buying my lumber material with respect to the places I bought it and the firms [594] I dealt with in 1936. I did not

(Testimony of Oscar H. Ostlund.)

know there existed between any union and anybody any agreement on the subject of where people were to buy their lumber. Before, during and subsequent to 1936, the lumber material I received did not bear the Union Label. I did not ever have any dispute or discussion with any of my employees about working on this material that did not bear the Union Label. I did not ever have any dispute or discussion with any carpenter installing the fabricated material on the subject matter of it being made out of non-union materials.

Cross Examination

By Mr. Clark:

I was treasurer. I signed all the checks. I did not attend any meeting of the Association or Corporation that succeeded it in which labor negotiations were discussed. I suppose I did attend meetings. I don't remember any particular one, I couldn't state when it was. I am certain that whatever meetings I attended there was no discussion of any labor negotiations or problems or any contract with labor.

JOHN E. MULLEN,

called on behalf of the defendants, being duly sworn, testified as follows:

purveyor of any kind of stock that we wanted like that. We do not sell any of the lumber out of that

(Testimony of John E. Mullen.)

Direct Examination

By Mr. Faulkner:

I am president of Mullen Manufacturing Company and have been since it was incorporated in 1915. It was not in existence prior to that in some form before becoming a corporation. Its business is general contracting and the manufacture of stores, office equipment and store fronts. That was its business throughout its existence.

We use many types of material, among which are lumber materials, mainly hardwood lumber. The second classification is [595] soft wood lumber. In dollars we use 25 or 30 per cent of the soft woods against 75 per cent of hardwoods. Hardwood comes from all over the world. Soft woods come largely from the North. We buy little material that has a milling process performed on it in a mill in the San Francisco Bay Area.

We occasionally want a load of, we will say, two by fours, and we order a load sent to the job, surfaced four sides, quarter off, and the mill may inform us they have the two by fours, but not surfaced, so it will be surfaced right away and sent down to the job. That would be a local application of milling. That would not amount to one per cent of our business in a year, practically negligible, but it does occur.

We maintain a lumber yard. In this particular instance it would be delivered directly there by the

(Testimony of John E. Mullen.)

yard to other people, we use it entirely in the fabrication of the various articles we manufacture.

We buy very extensively fabricated materials. We buy them from, for instance, Albany, Indiana, Hoosier Panel Company, from the Southern Mill and Lumber Company of North Carolina, from the General Furniture Company of Seattle, those are primarily the ones that come to mind, but we buy from anyone and everyone that purveys that kind of goods. We buy from Grand Rapids Furniture Company.

Installation of fixtures in the Woolworth Stores is considered an important phase of our business. In connection with that work we use these furnished products or partially manufactured products just mentioned, extensively. All of that comes from outside the State of California. It does not bear a Union Label to my knowledge.

In the course of business in 1936, and on and prior to that, we have employed men who belonged to Millmen's Unions [596] No. 550 and 42—about 75. We employ union men of other crafts. We employ carpenters with particular respect to the cabinet work. They do not belong to Millmen's Unions 550 and 42.

Between 1936 and 1940 we have made a separate contract with those carpenters. The millmen did not do for us any installation of the materials fabricated in our place, that is entirely done by car-

(Testimony of John E. Mullen.)

penters, it was during all of the time. It was true in 1936.

Mullen Manufacturing Company is a member of Commercial Fixture Institute. I am president and director of that Institute. Prior to incorporation I was president several times of Cabinet Manufacturers Institute. I was active in the affairs of both Cabinet Manufacturers and Commercial Fixture Institute.

In 1935 I was on a committee in negotiations with labor with respect of terms of employment. I was not on the committee in 1936. In 1936 I did not personally confer with any representatives of Millmen's Unions 550 and 42 on the subject of arriving at a contract. I knew that negotiations were being carried on on that subject. I felt I was always closely in touch with those negotiations and knew all about them. Primarily it was matters of wage scale, fundamentally, that were being negotiated.

I have been in Court during the period of this trial practically every moment. I knew in 1936 negotiations were being carried on with respect to wages and hours. I think I knew of every demand the Unions made at that time. It is a little difficult to keep these different contracts in mind. My recollection is on that particular negotiation they had not stated what wage scale they wanted; they wanted to revise the wage scale and that was what

(Testimony of John E. Mullen.)

the negotiations started on, to revise an existing wage scale. They progressed [597] a long time before these matters were agreed to.

During the course other demands were brought to my attention that were being made. I was informed they were going to require a Union Label on all materials they were going to manufacture for us.

Cabinet Manufacturers Institute, its members were very much represented at these labor meetings. I was president at that time. Our own employee, Mr. Ennes, represented Cabinet Manufacturers Institute members at these labor negotiations. I gave him instructions not to stand for that at all, referring now to the Union Label requirements on all materials coming in. I told him the business could not operate at all. We did not know that any of our material coming in was labeled, I knew very well it was not.

At a later time I had a discussion with Mr. Ennes about the exempt list. I told him not to stand for it at all. That was point No. 1. He brought it up again subsequently, and suggested that he was able to arrange it in a manner that would probably let our goods and supplies come in undisturbed. He read me a list over the phone, he started off, I think, with patterned lumber and expressions of that kind, and got down to mentioning dowels and quite a list, and asked me if I thought that list cleared us. I told him I could not tell, it

(Testimony of John E. Mullen.)

sounded all right, but he had been in our same line of business for ten years, he knew as well as I did about it, to look off and watch his step and not let anything in there that tended to hamper our operations. Besides this list, he said, "I have a qualification in that that I think clarifies it, anyway." He then read the qualification, which amongst other things spoke of manufactured articles in their completed state not being involved, nor anything that interfered with interstate commerce, and along that general subject that has been read here to the [598] Jury several times, that section particularly that he read of the confirmation, and his suggestion was that this qualification he had put in cleared us entirely, it was not involved in the restrictions that were in the contract. That was my judgment.

Paragraph 16 of the 1936 agreement covers the subject matter; it sounds like the list that Mr. Ennes read. The paragraph following the list is the paragraph that he read to me. There is another, "nothing herein is to be interpreted as preventing the entire production and sale of any article in its completed state to any buyer."

We never had any interference of any kind with our lumber by organized labor. I have never had a labor dispute. I never, that I know of, had any other private or separate agreement with Millmen's Unions 550 or 42 with respect to the movement of material either in interstate commerce or intrastate commerce. The agreement is signed by Cabinet

(Testimony of John E. Mullen.)

Manufacturers Institute, of which I was president. I absolutely did not ever have any private oral agreement with any union man on the subject of the movement of material. I have never had any discussion on the subject of interfering with the movement of lumber in interstate commerce; it has never been raised. I have never had a word of discussion with union men or agents about bringing in here, with the Union Label, manufactured articles made by the Grand Rapids Company and the firms in Seattle and Albany. They never told me anything about that.

When the contract was signed by Mr. Ennes, I do not think I ever read the contract from beginning to end; I knew about it; I did not read it section by section. If this is the original contract I would say that this is the first time I even saw it, but I knew all about it. I knew of it as it was being [599] negotiated. I knew all about the further negotiations with Organized Labor in 1938. I did not participate directly. Mr. Ennes kept me thoroughly posted on all movements. In 1938 they were certainly demanding a change in the existing wage scale. I feel I knew quite well what happened with respect to that particular demand. I was posted on everything that happened. I did not participate in the arbitration. I knew it was arbitrated.

In 1938 the rate of wage was fixed by the arbitrator. I feel that I knew of what was going on all the time. There was a great deal of discussion about the negotiated part of the 1938 contract. All

(Testimony of John E. Mullen.)

of it led to arbitration in 1938. I did not see the contract when it was entered into, that is, the contract was never entered into, it went to arbitration. Subsequent to the arbitration there was a contract arrived at by the arbitrator or an agreement, I don't know about it being a contract, but there was a decision of the Board, I mean that the arbitrator made his award. I knew his award was included in the contract. I know what changes were made in that contract. I never read any of these original contracts. I tried to keep posted as far as I could concerning the progress.

I was a member of the group of men in the industry who were negotiating through Mr. Epnes. In 1938, and after the 1936 contract expired, I had absolutely no private agreement or understanding with any labor organization or labor official, no private understanding of any kind.

I knew very well the situation presented by the fixing of the \$9.00 rate on San Francisco at a time when the Oakland shops were paying \$8.00; I knew what existed in that particular field. The effect to have had a \$9.00 rate for employees for the same union on one side of the Bay with an \$8.00 rate in Oakland is, that it could not be done, you could not operate that way. [600]

Cross Examination

By Mr. Zirpoli:

I was president of Cabinet Manufacturers Association several times and was president in 1936,

(Testimony of John E. Mullen.)

1937 and 1938, and remained president until I became president of the new Institute, in January, 1939. I was not on any labor negotiating committee between the period 1936 and 1940. I was on none of the negotiating committees for a contract. There were meetings called of the Institute while I was president. Between 1936 and January, 1938, I would say, I would have to guess at it, probably five or six meetings in a year were called. I would say five or six meetings in 1936, 1937 and 1938, I am guessing at it.

I don't know if minutes of those meetings were kept. I never heard minutes of the previous meeting read. We had only one employee, and that was Mr. Ennes, who was secretary and manager. The main reason for having Mr. Ennes on the job was to take care of our labor contracts as an Association. He had nothing to do with the sale of the material for any of the other members or with the actual business. The primary reason he was employed was for labor negotiations. Anything else that came up in the way of industrial matters that affected our industry was his business. All of his time was supposed to be devoted to that.

I recall meetings in 1936. The labor contract of 1936 was not discussed as a business of the meeting. Whenever we entered into a contract with the millmen it invariably followed we were going to make a contract or agreement with the carpenters.

The biggest contract that affected our industry

(Testimony of John E. Mullen.)

in 1936 was with the millmen. At the five or six meetings of the Association during 1936 the contract was an incidental matter of discussion, any time two members of our Institute met at a meeting or on the street or in a restaurant or any place it was fundamentally a subject of conversation. [601] Incidentally we discussed it at the meeting. It would be the point of view, if there was anything discussed at these meetings more important than that contract. The contract was taken care of. We had definitely taken care of it.

We discussed the relation between the Cabinet Manufacturers Association and the Architects Institute, who introduced legislation in Sacramento. It affected our business very much. Any time a group of cabinet manufacturers met in a meeting they would certainly ask how they were getting along with the negotiations and what do you think it is coming to? We would discuss that any time we met. So far as understood there was no terms of the contract at that time and we were not discussing terms of the contract. Mr. Ennes consulted me from time to time with relation to the contract.

I didn't specifically have a conversation with respect to the sending of copies of the contract to each of the members of the Association. It stands to reason that the members of the Association would be informed. I believe a copy of the contract was discovered in my office and placed in Court. I would not know if I had a copy of the 1936 contract in my

(Testimony of John E. Mullen.)

office, because if the 1936 contract, which controlled the wages of employees and working conditions was superseded by another, the old one was disposed of; it is through and no more use.

I have not the slightest doubt but what any contract that was entered into I knew all about it. I discussed every feature of each of these contracts with somebody at sometime. The payroll was the primary feature of phase discussed with other members of the Association. I might have discussed the exempt list with a fellow member. I would imagine I would discuss anything of interest to the Association. I gave the substance with relation to the exempt list in part to Mr. Ennes, the best I could. To my mind it was an important feature in [602] the contract.

I could not name now a specific instance when I talked about the exempt list to any individual or group of individuals of our Association. I remember no discussion of the exempt list taking place in any of the meetings that were held. I have no recollection of the exempt list ever having been discussed at any of these meetings between 1936 and 1940. I said I didn't remember a single instance of our lumber being interfered with. He addressed that to me personally. I did hear of interference with the bringing in of lumber on the part of the mill-owners, I heard of it. I could not tell you if it was common knowledge in our industry.

The character of lumber used in our industry is

(Testimony of John E. Mullen.)

essentially rough lumber. We use surfaced lumber also; matched and beaded lumber, tongue and groove, some panels, veneers and plywood.

It is important to my industry to get plywood from the great plywood centers of the country, their price is more favorable, in any event. We get plywood largely from the Northwest. That is largely true of the other woods used in our industry.

Plywood is when the lumber is cut into very thin pieces of veneer and then put into a heavier piece. This lumber comes into our shop and we mill it and mold it in our shop. We have machinery and equipment for that purpose.

I am president of Mullen Manufacturing Company.

Redirect Examination

By Mr. Faulkner:

We mill and mold lumber entirely for our own use in our own products, not for sale as lumber or milled lumber or anything of that type. In addition to the rough lumber re- [603] ferred to, and plywood, we also partially manufacture articles that we install in the fabricated articles we sell. We consider in very substantial quantities. Those are the articles referred to that came from Seattle and Albany and the Grand Rapids people.

I recall that Mr. Wine testified and that he interviewed me in 1940. I had a conversation with him, he introduced himself properly. As I recall the conversation I did not tell Mr. Wine that I knew of

(Testimony of John E. Mullen.)

any verbal agreement with the Institute concerning the movement of either millwork or patterned lumber or any article. I did have a conversation concerning the movement of lumber. Mr. Wine brought up the subject of the stoppage of milled lumber and I told him that I had heard that they had stopped the lumber from coming in. We discussed that line which might be connected up by referring to an open situation. I think Mr. Wine told me that they operated there under what he termed a Bell System, and he said he didn't think that the Bell System was predicated upon a legal foundation, that they were going to investigate that Bell System and that was, generally speaking, the method of how he covered it, and I did know, or did hear or had heard, that lumber had been stopped by the Unions. I did not know what the Bell System was, except as he explained it to me. From what little he did explain it was some system developed by somebody, naming it the Bell System, which they had put in operation in Oakland. That is sketchy, but is as near as I can clear it, because the conversation was sitting and visiting in my office and I am just giving the best recollection I have of it.

I don't recall Mr. Wine ever asked such a question that there was a verbal agreement with the Institute concerning the movement of mill work or lumber. I think I volunteered the source of my information. I told him that the salesmen who were [604] selling us for the Pyramid Lumber

(Testimony of John E. Mullen.)

Company, that was the first mention that I had heard of it and I think he said this lumber had been stopped in Oakland.

From 1936 to 1940, I saw lumber salesmen all day long, you might say. During that period no lumber salesmen told me that any material that Cabinet men were using had ever been stopped by anybody, except the milled lumber that you speak of. I don't think we went into whether that was for a cabinet builder or a mill, it was simply stated they had stopped millwork in that area. We didn't go into the particulars as to the run of it or what particular kind of millwork it was.

A planing mill, generally speaking, takes the lumber as it is manufactured at the sawmill, which primarily is a matter of boards simply cut out of a log and they are in that rough form, and run that lumber into patterns of any kind, whatever they want to run it into. When they get through with it, it becomes finished millwork. In the form of finished millwork it is for sale, but has not reached its ultimate use. When we get lumber, in whatever form, it never reaches its ultimate use until we get it fabricated into some finished article to install. Lumber that we use has reached its ultimate use in the same way that lumber has reached its ultimate use in the building of a home or office building, the same situation, it would be the same thing.

(Testimony of John E. Mullen.)

Recross Examination

By Mr. Zirpoli:

We buy counter fronts from the Hoosier Panel Company in Albany, Indiana, completely manufactured so far as that piece is concerned; we still have to fabricate it to make up the manufactured article at the plant. We buy the same character of thing from General Furniture Company in Seattle.

I had a conversation with Mr. Wine about the Bell System. I don't know if it was a price-fixing system, I understand it was connected with the stoppage of lumber. I did not [605] have any conversation about price-fixing with the Commercial Fixture and Store Front Institute that I recall. That matter was not discussed at all in any of the meetings of the Cabinet Manufacturers. Prices were never discussed at any time. Prices never entered into either the Cabinet Manufacturers Institute meeting or the Commercial Store Front and Fixture Institute.

"Did you tell Mr. Wine that the local mill operators in San Francisco have a verbal agreement with the Millmen's Union of San Francisco and Oakland that lumber could be cut and patterned only in local mills which pay the local union wage scale since the mills in Northern California and Oregon where lumber is cut and patterned operate upon considerably lower wage scales than paid in San Francisco?

(Testimony of John E. Mullen.)

"A. That was a topic of our conversation about lumber and about its being outside of San Francisco, but we never touched on the matter of a contract or agreement running between the Institute or anybody else."

I didn't refer to a verbal agreement with the local mills and unions in San Francisco and the mill operators, I referred to the fact that the unions had stopped the flow of lumber and had placarded it with signs and refused to let it be unloaded, and our conversation was along that line and not in reference to agreements or contracts. We didn't go into the matter of agreements or contracts, we didn't talk about agreements and contracts. We only had this one conversation, maybe two. I saw him, I think, twice.

I am giving Mr. Wine's conversation with me just as the reporter might read to you here. Limited to agreements, the answer would be No. I didn't talk to Mr. Wine about agreements with those unions, whether written or verbal. Price was not an element in our meetings.

Cross Examination [606]

By Mr. Routzohn:

The only lumber I testified as having been stopped was in a shipment or shipments from the Pyramid Lumber Company; I think we were dealing with lumber generally. I think the Pyramid Lumber Company lumber was mentioned, I just remember

(Testimony of John E. Mullen.)

the young fellow that comes every two weeks from the Pyramid. I haven't any idea if the Pyramid was a non-union mill. I only know they sell it to me. I wouldn't know whether they get a commission.

Lumber purchased through Pyramid Lumber Company largely was Klamath Falls shipments, not necessarily originating at that point, but it was from Klamath Falls. I think coming through Klamath Falls, that would be stretching it over a period of four or five years. I didn't know that it was unstamped, non-union made. I don't know whether it was stamped or not. The question whether it was stamped or not was never raised.

Cross Examination

By Mr. Zirpoli:

The lumber purchased was simply surfaced, rough lumber, surfaced two sides.

WILLIAM P. KELLY,

called on behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Routzohn:

I have lived in Alameda since 1910, with the exception of one year I lived in Oakland, and some nineteen months that I went into the Army. At the

(Testimony of William P. Kelly.)

present time I am the apprentice co-ordinator for the Bay Counties District [607] Council of Carpenters. That is a position for coordinating all the various apprentice schools, and getting in touch with the School Boards and all the related matters connected with training an apprentice to be a carpenter or millman or whatever he is training to be. That is connected with not only the millmen's contracts but all the contracts within the Bay Counties District Council.

I am a millman by trade or profession and have been since 1908, working in planing mill and cabinet shop. I started as a carpenter's apprentice, but did not stay with that long, I went into a mill and have been there ever since. I belong to Millmen's Local Union No. 42, located in San Francisco. It is chartered by United Brotherhood of Carpenters and Joiners of America and affiliated with Bay Counties District Council of Carpenters and the California State Council of Carpenters. I was president of Millmen's Union 42 for three or four years, and secretary for five or six weeks. I was president, I believe, in June, 1933, about three years that time, then there was an intervening year, and I was president again for another year. I served as negotiator for Millmen's Union 42 many times, first in 1932 in San Francisco. I was negotiator in 1935, 1936, 1938, and again at the present time, 1941.

There was an agreement drawn in 1935, between Millmen's Union 42, The Bay District Council and

(Testimony of William P. Kelly.)

the millmen in San Francisco. Exhibit 14-8 for identification, dated June 27, 1935, is a photostatic copy of that agreement. It was a negotiated agreement.

Thereupon the document was introduced in evidence as "Defendant's Exhibit N" and was read as follows:

"Agreement of Wages, Hours and Working Conditions June 27, 1935.

"This Agreement is a voluntary Agreement entered into in [608] good faith by all parties who stipulate that they have full authority to bind their organizations to the terms hereof, including that of the duration of the Agreement, by signing this Agreement.

"This Agreement is a short form of Agreement and may be modified by the Agreement Committee by mutual consent of the Committee. The Agreement Committee to be as follows:

"Representing the Employers:

M. John Mullen and

Mr. F. S. Spencer

"Representing the Employees:

Mr. D. H. Ryan and

Mr. Chas. Helbing.

"1. The member firms of the San Francisco Planing Mill Owners Association and the Cabinet Manufacturers Institute of California, Northern Division, shall operate what is commonly known as "Closed Shops" under the following conditions.

(Testimony of William P. Kelly.)

"2. Eighty (80) cents shall be the minimum hourly rate of wages for Journeymen in Planing Mill Department and Cabinet Department.

"3. Seventy (70) cents shall be the minimum hourly rate of wages for Journeymen in Stock Sash and Door Department.

"4. Eight (8) hours shall constitute a regular work day. The regular work day to be between 8:00 A. M. and 5:00 P. M. Five (5) days to constitute a regular work week from Monday to Friday, inclusive.

"5. Time and one half shall be paid for all overtime after the regular work day period of eight (8) hours except when double time shall be paid, and except that time and one half shall be paid for work on Saturday from 8:00 to 12:00 M. which shall constitute overtime work. No work shall be done on Saturday from 12:00 M. to 12:00 P. M.

"6. Double time shall be paid for work on Sundays and holidays. Recognized holidays being New Year's Day, Decoration Day, Fourth of July, Labor Day, Admission Day, Thanksgiving Day, [609] and Christmas Day.

"7. When two shifts are worked in any twenty-four hours, shift time shall be straight time.

"8. When three shifts are worked, eight hours shall be paid for seven hours, work for the second and third shifts.

"All questions, differences and other matters of mutual concern coming within the scope of this

(Testimony of William P. Kelly.)

Agreement, shall be submitted to a joint committee for consideration, and it is agreed that pending the decision of the joint committee, neither party to this Agreement will take any action that will in any way delay or interrupt the orderly conduct of the business interests herein represented.

"The composition of the matters pertaining to this Committee to be determined by the Agreement Committee hereinbefore mentioned.

"Work in progress and work for which contracts have been entered into prior to June 27, 1935, may be completed at a wage rate of seventy cents (70c) and sixty cents (60c) per hour for the respective classifications mentioned in Items 2 and 3 at eighty cents (80c) and seventy cents (70c) per hour respectively. This work to be certified by a Committee having one representative each for the Employers and Employees. This Committee is here authorized when they deem it advisable and where agreeable to the specific shop to agree to and certify a definite date on which the new rate is to become effective or to determine the number of man hours that may be employed under the old rate before the new rate becomes effective, provided that under any and all conditions the basis of such determination shall be work in progress and contracts entered into prior to June 27, 1935.

"This Agreement is effective June 27, 1935, and is for a period of not less than one year from that date and shall continue to remain in full force and

(Testimony of William P. Kelly.)

effect thereafter, excepting [610] that same shall be subject to change or modification or termination by either party upon sixty days' notice being served in writing upon the other party.

**JOINT COMMITTEE OF SAN
FRANCISCO PLANING
MILL OWNERS ASSOCIA-
TION and**

**CABINET MANUFACTURERS
INSTITUTE OF CALIFOR-
NIA, NORTHERN DIVISION**

By J. G. ENNES,

Secretary.

**UNITED BROTHERHOOD OF
JOINERS & CARPENTERS
OF AMERICA, MILLMEN'S
UNION No. 42,**

By WILLIAM P. KELLY

CHAS. HELBING

OTTO W. SAMMET

**BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS**

By D. H. RYAN,

Secretary-Treasurer."

The negotiations started along in the Spring and the latter part of May they broke down and the men went on strike, for about two weeks and then there was an arbitration agreement arrived at; but before the Arbitration Board was finally selected and

(Testimony of William P. Kelly.)

proceedings started there was an agreement reached which is the agreement you just read.

Mr. Ennes was representing both groups at that time, that is, he signed for both groups but the Committee composed quite a few parties. Some of the men who represented San Francisco Planing Mill Owners in the negotiations were Fred Spencer, Jack Hart, Elmer Anderson, I believe at that time the secretary of the Association was Mr. Williamson, that is what I remember. I remember Mr. Emanuel being there, Mr. Mullen, and of course, Mr. Ennes. That did not represent all of the Planing Mills in San Francisco.

At the time that agreement was signed with the Planing Mill Owners Association there were a number, quite a few, other planing mills in San Francisco that did not sign. That [611] is also true with reference to the cabinet shops. I am unable to give the number of them, except for some rough estimate. The agreement calls for what is termed "A closed shop." After it was signed in Oakland there were certain mills in Oakland signed a similar agreement, not that one but a similar agreement. There were also mills operating in Oakland subsequent to this time which did not sign any similar agreement.

After this agreement there was a notice signed, calling for negotiations for a 1936 agreement. A certain notice was served on the members of this 1935 contract, the mill owners and the cabinet shop-owners and by the unions, asking for a change in

(Testimony of William P. Kelly.)

the contract. I could not tell when that was served without seeing the notice. It was served in the Spring of 1936. After that notice was served the regular routine was followed. Committees were appointed, we had our own committee and we met with the Committee from the Mill Owners. I do not know how they formed their committees.

William P. Kelly, Emil Ovenberg, Otto Sammet, and I think there were others come in at the meeting at times, representing the unions, and of course, D. H. Ryan represented the District Council of Carpenters. J. A. Hart of Lumber Products Association, D. N. Edwards for the East Bay Mill Owners, J. G. Ennes of the Cabinet Manufacturers Institute of California, Northern Division, represented the Mill Owners.

The 1935 contract only pertains to Local 42, and in the 1936 contract Local 550 was represented as well. 550 is the Millmen's Union located in Oakland. Otto Sammet served with me, representing 42. Messrs. Ovenberg and O'Leary represented 550. I would say the negotiations started along in the latter part of the Spring and continued through the Summer. We signed an arbitration agreement but before the proceedings ever started we arrived at an agreement which cancelled the [612] arbitration agreement. Arbitrators were named prior to arriving at our agreement. Exhibit 131 is the negotiated agreement.

I had seen another contract with clause 16 in, in.

(Testimony of William P. Kelly.)

different forms, parts of these provisions were in the 1917 agreement and in the 1903 agreement.

"U. S. Exhibit 70" for identification is one form of the 1917 agreement referred to.

Thereupon typewritten copy of the 1917 Agreement was introduced in evidence as "Defendant's Exhibit O", being Articles of Agreement between the San Francisco Planing Mill Owners Association and the Building Trades Council of San Francisco, and the following portion was read:

"Article 2, section 1:

"It is agreed by the Building Trades Council that they will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or are paying less than the wage scale hereinbefore quoted, or employing other than union mechanics.

"Sec. 2. These conditions do not apply to the following materials coming directly from the saw mills, to-wit:—

And it mentions flooring and certain items in connection with flooring, ordinary siding, stepping and surfaced redwood, and it refers to dimensions of the lumber."

Thereupon "Articles of Agreement between the San Francisco Planing Mill Owners Association and the Building Trades Council of San Francisco, effective June 10, 1903", was introduced in evidence as "Defendant's Exhibit P" and the following read:

(Testimony of William P. Kelly.)

"I read from article 2 of the 1903 agreement:

"Sec. 1. It is agreed by the Building Trades Council, that they will refuse to handle any material coming from any mill [613] or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or employing other than union mechanics.

"Sec. 2. These conditions do not apply to the following materials coming directly from the saw mills, to-wit:—

Mentioning then dimensions, flooring, ordinary siding, stepping, surfaced redwood.

"Section 3: "These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other states."

"Defendant's Exhibit Q" for identification is "By Laws and Trade Rules, Bay Counties District Council of Carpenters", adopted August 5, 1925, and such document was introduced in evidence as "Defendant's Exhibit Q" and the following portion read:

"Extract of Agreement Made With Mill Owners.

"The following material does not need to bear a stamp, it being stock material; if, however, it is manufactured in this city, it must be stamped. It is agreed that every piece of material milled must be stamped immediately after being sent through the machine, before it is stowed away or used.

(Testimony of William P. Kelly.)

“ARTICLE II.

‘Section 1. It is agreed by the Building Trades Council that they will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less than the wage scale hereinbefore quoted, or employing other than Union mechanics.

“Sec. 2. These conditions do not apply to the following materials coming directly from the saw-mills, to-wit:”—

“Ordinary siding, flooring, stepping, surfaced redwood and the dimensions as to them. [614]

“Sec. 3. These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other States.’ ”

I heard the testimony of Mr. Ennes. I believe the clause just read in evidence from the 1917 Agreement is the clause he referred to as having to do with exemptions. The manufacturers called our attention to the clause in the '17 Agreement.

As near as I can recall it was Jack Hart who asked for inclusion of similar terms in the 1936 Agreement. I would say Mr. Ennes concurred in it.

Under the 1935 contract there had been many what we considered violations of that agreement in the use of the Union Stamp by the employers. Our men were required, not exactly required, but asked,

(Testimony of William P. Kelly.)

to work on material that was partly fabricated and when they finished the fabrication to put the Union Stamp on it, and the Union Stamp is very important to us, and we objected to it. Of course, the employers had objections to certain things too, but there was some of this stuff that they wanted us to handle without having a stamp on. We wanted, of course, to have the Union Stamp on everything that we handled and there were certain things that they called our attention to that they had to use that did not bear the Union Label and there was no way of getting them with the union label on them, and that was what brought in some of these items like dowels, panel stock. Of course, we objected to including panel stock for the reason that part of it we could manufacture here in the mills ourselves and put the label on it ourselves rather than have it brought in partly fabricated. However, it finally went in over our objection. The only company making stock panels around here, of any amount, was the Pacific Manufacturing Company in Santa Clara, but we realized they could not possibly make enough stock panels to supply this market. [615]

Pacific Manufacturing Company used the Union Label at that time. They signed up in May, 1936. They didn't have the same wage scale.

Very few veneers are made here, it is too expensive to make them here. They can be made here, but not sufficient quantities. Machine-carved,

(Testimony of William P. Kelly.)

pressed and embossed moldings are not made here and we knew of no place to get them with the Union Label on. The doors, pine, redwood and Philippine Mahogany and the two-light windows, we very definitely objected to having to use these doors. They would bring these one-panel doors into the shop and expect the men to make two or three panel doors out of them. They would come in as a complete article and just placed a rail across the center, or two of them, and made two or three panel doors out of them, and expected us to put the Union Stamp on them. We objected to that, but had to agree that possibly the plants around here didn't have the proper machinery to manufacture enough doors to complete all the jobs in this area.

We finally agreed to it after they had insisted that these doors should go on the exempted list.

The two-light window is the most common window that is used. We objected very violently to that type window being included, because we thought we could make them here, but it went in anyway over our objections. The rest of this exempt list, lumber, rough and surfaced, sheathing, flooring, siding and clapboard, stepping, T & G, that is the part that was lifted from another agreement that you see there, the 1917 and the 1903 agreement. That is what we term unstamped or non-union materials.

Our principal objection at that time was that

(Testimony of William P. Kelly.)

taking non-union articles and doing some work and after doing a small portion of work, putting the stamp on them. It was [616] the showing made by the employers that some of those articles could not be procured with the union stamp on them that led to the exempt list. They dug up this old exempt list from the 1917 and other agreements and produced that, saying that we had done that formerly and giving that as a reason why we should do it again. We agreed to it.

The stamp is a rubber pad with a top of wood that you stamp with and there is the label. The label is the registered trade mark of the United Brotherhood of Carpenters and Joiners. A label is what goes into the stamp that is stamped on the material. The stamp is a notice to every union man what the material is. It has a significance that is very important to every union man and to their friends. The stamp is put on for a notice to a union man that it is union made. For instance, if I walk into a store and want to buy a suit of clothes, the first thing I ask them, if there is a union label on it; or any other item, and naturally we expect the other union people to do the same thing with our particular items. It is also a means used for organizing unorganized people. Certain plants when they find that people are walking into their plant and asking for a union-made item and they can't produce it, start hiring union men or signing a contract with a union, so they can procure a stamp and put it on their material. Further than that it

(Testimony of William P. Kelly.)

is part of the obligation that any union man takes when he becomes a union member, he obligates himself to buy union-made goods wherever he can. That is part of the obligation.

Exhibit No. 17, Page 56, paragraph B of Section 60 is a facsimile of the label of the United Brotherhood of Carpenters and Joiners of America.

There is no such thing as a local stamp. The label of the Brotherhood is what we refer to as the Union Stamp. [617]

The obligations of membership regarding work done or the use of the Union Label comes in there several times. I will read an excerpt from it:

"I promise to abide by the Constitution and By-Laws—and the will of the majority—observe the local trade rules of this Order—and that I will use every honorable means to procure employment for Brotherhood members.

"I agree to ask for the union label and purchase union-made goods and employ only union labor when same can be had.

"That covers that part of it; that is where I said that 'I promise to abide by the Constitution and By-Laws'—that brings me back to this.

"Q. What is there in that section referring to the label and the use of it?

"A. That is by the members. It says in paragraph N of section 60, on page 58:

"It shall be the duty of all District Councils, Local Unions and each member to promote the use of trim and shop-made carpenter work, hotel, bank;

(Testimony of William P. Kelly.)

bar, store and office fixtures, and of church, school, household furniture, etc., and to make it generally known to the members of the Local Union that it is necessary to all mill and shop members and the United Brotherhood that products made in factories, shops or mills where only members of the United Brotherhood are employed should be installed by fellow-members.' "

They have to have an agreement of employment of union men in order to have the label placed on the products coming from the mills. That was the agreement that was introduced the other day in order to get the label. The 1936 contract was to be in operation for about two years from the effective date.

Subsequent to adoption of the 1936 agreement we served notice on employers we desired a change in the contract [618] in accordance with the terms of the agreement. Exhibit 180 is a copy of it.

Subsequent to the notice negotiations took place. I was appointed on both Conference Committee and Negotiating Committee. The Conference Committee is the committee that deals within the unions themselves; that is between 42 and 550 or any other union involved, and then that Committee appoints from its members the Negotiating Committee, who meet with the employers.

I was appointed on the Conference Committee by Local Union 42, the joint Conference Committee selected me as one of the Negotiating Commit-

(Testimony of William P. Kenly.)

tee, and I served. It is my recollection negotiations began quite soon after the notice of April 11, 1938. We agreed on quite a few of our differences. When we go into negotiations and what we can agree upon immediately, that is set aside, and when we get down to the tough ones that takes more time. The tough ones in this particular instance were wages and hours. The provisions in the contract were they wanted an increase in wages and a shortening of hours. The employers didn't accede immediately, they never do. We never did reach a complete agreement, we did agree on the majority of the clauses but the few that were left were submitted to an Arbitration Board.

Thereupon Arbitration Agreement was introduced in evidence as "Defendant's Exhibit R", and was read as follows:

"ARBITRATION AGREEMENT

"1. In the event negotiations fail in the adjusting of any or all differences in the Employer-Employee Agreement of Wages, Hours and Working Conditions, Millmen's Union dated September 21, 1936, then the parties hereto agree to settle such unadjusted differences by arbitration.

"2. It is stipulated and agreed that such conditions of [619] employment as may be agreed upon on or before going to arbitration, or during arbitration, shall not be subject to arbitration, and that all conditions of employment mutually agreed upon on or before going to arbitration, or during

(Testimony of William P. Kelly.)

arbitration, shall be incorporated in and made a part of the award and findings of the Arbitration Board.

"3. The Arbitration Board shall hand down its award not later than June 15, 1938, and shall be effective as of June 15, 1938.

"4. In the event a lower hourly rate of wage is negotiated or awarded, then all work in progress and all contracts in hand, even though not started before June 15, 1938, shall be completed under the existing hourly wage scale.

"5. In the event a higher hourly rate of wage is negotiated or awarded, then all work in progress and all contracts in hand, and all bids opened before June 15, 1938, shall be completed under the existing hourly wage scale.

"6. This work is to be certified by a Committee having one (1) representative each for the respective Employers Association and Employees. This Committee is hereby authorized, when they deem it advisable and where agreeable to the specific shop, to determine a date on which the new rate is to become effective. The list of work in progress, contracts in hand, and all bids opened before June 15, 1938, shall be filed with the Committee not later than June 22, 1938.

"7. In any event, no protection shall be afforded on listed bids that have not been accepted in writing by an awarding authority by July 15, 1938.

"8. The Arbitration Board shall be the Arbi-

(Testimony of William P. Kelly.)

tration Board established by the B.T.E.A.-B.T.C. unless some other arrangement is mutually agreed upon. Copy of the B.T.E.A.-B.T.C. arrangement is attached hereto for reference. The expense of arbitration to be borne one-half by the Employer group and one-half by the Union Group. [620]

"9. It is stipulated and agreed that Union conditions of employment as provided for in the present Agreement between the parties to this Agreement, shall be continued, and not be subject to arbitration.

**BAY COUNTIES DISTRICT
COUNCIL OF CARPENTERS**

D. H. RYAN

**UNITED BROTHERHOOD OF
CARPENTERS AND JOIN-
ERS OF AMERICA MILL-
MEN'S UNION 550**

E. H. OVENBERG

C. H. IRISH

W. C. O'LEARY."

**UNITED BROTHERHOOD OF
CARPENTERS AND JOIN-
ERS OF AMERICA MILL-
MENS UNION 42**

W. P. KELLY

A. W. EDWARDS

**LUMBER PRODUCTS CON-
FERENCE OF SAN FRAN-
CISCO**

J. G. ENNES

(Testimony of William P. Kelly.)

I was selected by the Committee to serve on the Arbitration Board as a technical advisor. D. H. Ryan, secretary of the Bay Counties District Council of Carpenters, served on the Committee representing the Union. J. A. Hart and Elmer Anderson represented the employers, Judge Walter Perry Johnson was the neutral arbitrator.

We finally reached an arbitration award. Before the award was finally signed there was an agreement as to the inclusion of what is known as Paragraph 8. Everybody agreed to that paragraph who signed it. I participated in the negotiations which led to the sending of a certain statement or language of the award to Judge Johnson for his approval.

In the arbitration award itself we discussed this matter as to the conditions that we were confronted with in the application of the award. We have unions on both sides of the Bay, signed up to the Arbitration Agreement, subject to the finding, and only the mill owners and cabinet shop owners on the San Francisco side, so it seemed necessary to try to arrive at some clause to be inserted in the award to take care of that situation, both sides of the Bay, if possible. That was mailed to Judge Johnson.

The reason of that was we would have the Planing [621] Mill Owners and the Cabinet Manufacturers on this side of the Bay paying \$9.00, competing with mills paying \$8.00. We discussed this

(Testimony of William P. Kelly.)

in the Arbitration Board as to what would be put in there, and discussed the wording of the clause that it was contemplated inserting. Judge Johnson finally told us, "Now you fellows go ahead, get up this and write up something and submit it to me and I will see what I will do with it," and that is the origin of that particular letter. We went and discussed the matter and finally wrote that letter to Judge Johnson.

Mr. Nat Edwards was not sitting in at the arbitration. He sat in during all the negotiations. He represented the Wood Products, Incorporated, an Association of mill owners of the East side of the Bay. There was some question raised as to whether the arbitration award applied to Mr. Edwards and the mill owners he represented, and that is what gave rise to Section 8.

There was another reason in addition to that as to asking that the same working conditions be complied with. There were other mills and cabinet shops in the area which were not organized, that is; they were non-union plants and it was designed, of course, to cover those also.

We were not arbitrating for the Northwest. The paragraph referred to conditions as existed in the territory covered by the Bay Counties District Council of Carpenters. After the arbitration award was made it was accepted by the union men, it was for \$9.00 a day. It was accepted by the men who had entered into the Arbitration Agreement. There

(Testimony of William P. Kelly.)

was a small group of mills, eight or ten, at the most, represented by Mr. Edwards, which operated in the lower end of Contra Costa County that accepted it. The Wood Products did not accept it.

There were considerable negotiations I was not [622] involved in through Associated General Contractors and also the Building Trades Employers Association. The original basis of arbitration was on the Building Trades Employers Association set-up, which we were parties to, with whom we had an agreement to avoid all industrial disputes. We didn't get the thing straightened out in so far as Oakland was concerned. It came up to October 1st and the men in Oakland went on strike; they stayed out on strike about two weeks. There were negotiations following the strike. There were attempts made naturally to sign the Oakland side to \$9.00, but that was not successful.

There was some kind of an offer made, I don't know from my own personal knowledge just where the offer came from, that the San Francisco Union would accept \$8.50 and the Oakland Union would accept \$8.50, but an arrangement was being made whereby the \$8.50 would also apply to Contra Costa County and Santa Clara County, making a uniform wage in six counties. They were not in one unit. There were several different contracts, but they were practically uniform. All accepted the \$8.50 for a basic wage and thereafter that wage obtained in those six counties. I think I heard it read here on the 17th that it was finally ratified.

(Testimony of William P. Kelly.)

I had something to do with the adjustment of wages following the award. When it was finally decided by the Union representatives to consider this change in wage, I met a group that had already been talking to Mr. D. N. Edwards of Oakland, of the Wood Products, and they told me that he had accepted the proposition, and then we met Mr. Pierce of the Redwood Manufacturing Company of Pittsburg at the Hotel Oakland and accepted it; then we drove down to Santa Clara and picked up the business agent there in front of the Pacific Manufacturing Company plant and went in and talked to Mr. Pierce, the manager of that plant, and he agreed to go along in that program. [623]

Redwood Manufacturing and Pacific Manufacturing Companies both brought their wages up to meet the \$8.50, and the local unions in San Francisco agreed to drop from the \$9.00 award to the \$8.50 in order to make the wages uniform in the six counties. At that time some of the mill owners had paid the \$9.00 wage. The adjustment was principally on the old work that was on hand at the time that the award was handed down. The \$9.00 wage was in effect from the time of the award until, I believe it was, October 17th.

The new and old work entered into the agreement. At the time we entered into the 1938 contract, as it was finally agreed upon, I would say we did not have contracts with all of the cabinet shops in the Bay Area. By no means did Mr. Ennes rep-

(Testimony of William P. Kelly.)

resent all the cabinet shops in the Bay Area at that time. We obtained separate agreements from many of the cabinet shops who were not represented by Mr. Ennes.

"Q. Yes. Have you those contracts?

"A. I have no doubt that they are on file in the Local Unions, or in the District Council.

"Mr. Carson, II: They have been brought in for identification but they have not been separated.

"The Court: Well, I think it is immaterial, anyhow; you are wasting time in producing them, gentlemen. If you wish to make a formal offer of them I will make a ruling now.

"Mr. Routzohn: Q. Can you tell us about how many there were that you obtained, contracts from people other than those represented by Mr. Ennes?

"Mr. Burdell: I object, as immaterial and no foundation, and calls for his conclusions.

"The Court: I think he said no.

"The Witness: No, I did not say anything.

"The Court: The objection is sustained. [624]

"Mr. Routzohn: We would like at this time, if your Honor please, to make a proffer of all the contracts that we brought in here at the instance of the Government.

"The Court: Well, produce them; find them and produce them.

"Mr. Routzohn: If I can prevail on the Clerk, here, to do that, your Honor, please.

"The Court: Well, I think you ought to assist

(Testimony of William P. Kelly.)

the Clerk in doing that if you know what they are. Make the offer some other time.

"Mr. Routzohn: All right, sir. We can do that before this witness leaves.

"Q. Is that also true in the 1936 contract, that you obtained contracts from others than those represented by Mr. Ennes?

"A. Yes.

"Mr. Burdell: I ask the answer be stricken and I will also interpose the same objection.

"The Court: The answer may go out. Objection sustained.

"Mr. Routzohn: Q. The same question as to the Mill Owners represented by Mr. Edwards and Mr. Gaetjen, that is, the other Mill Owners, whoever they were; over here on this side of the Bay, did you obtain contracts with other mill owners that were not represented by them?

"Mr. Burdell: The same objection.

"The Court: Sustained.

"Mr. Routzohn: Now, if your Honor please, at some other time we would like to make that offer.

"The Court: Very well."

After adoption of the 1938 award I took on other duties in reference to the old work provided for, that is, taking care of the old work provided for in the agreement. I had nothing to do with the 1938 contract referred to. At no time did I ever enter into a verbal agreement or understanding of [625] any nature with the employer groups or my own

(Testimony of William P. Kelly.)

union men relative to the work that was to be performed on the materials in this area.

There has not been, to my knowledge, at any time, any verbal agreement separate and apart from the agreement we have been talking about here that have been put in writing. There has not been anything transpire that I know of whereby there has been any secret or verbal understanding that the unions were to discriminate against the wood and patterned lumber products of the Northwest, and interfere with them in any manner, shape or form, interfere with Interstate Commerce.

I know of no agreement whatsoever other than the agreements we have been talking about that have been introduced in evidence.

Cross Examination

By Mr. Burdell:

In 1936, other than Messrs. Kelly, Sammet, Ovenberg and O'Leary, my recollection is that Mr. Helbing was on the Negotiating Committee for the Unions. In 1936 Mr. Ennes signed for the entire group as I remember it. There were negotiations leading to the execution of the 1936 contract. Jack Hart, Elmer Anderson and, I believe, Harry Gaetjen, represented the mill owners.

Mr. Ennes was present at those negotiations from the Cabinet Institute. There was no one else present from that group that I remember. I don't recall Mr. Mullen or Mr. Emanuel being present at any of those negotiations. My recollection is Mr.

(Testimony of William P. Kelly.)

Gaetjen was there, I am not sure about Mr. Warden. I have attended so many of these conferences it is almost impossible to place them without something to direct my attention.

The duties of the business agent of Local 42 are, in the [626] first place he goes around and checks the mills to see that the men working in the mills under contract are union men, and that the provisions of the agreement with the employers are being lived up to and they are being paid the proper wages, to appoint stewards in the mills and to do a thousand and one other duties that fall upon the business agent. If sometimes a member dies, he goes out, if he has no friends or relatives, and makes funeral arrangements, sees that the man is properly buried, goes bail, maybe, for someone who is—the speed limit.

One of the chief duties is to enforce the provisions of the Employer-Employee Agreement.

It is a fact that each stamp of the United Brotherhood of Carpenters and Joiners of America has a number on it. That number represents the number of the mill and the district where the stamp is issued. It has an indication showing the geographical district. By looking at the stamp you could tell where the material came from. The business agent does not have occasion to use the expression "Local Stamp" in the line of business. We have no such thing as "Local Label."

The contract provides either party, and that if

(Testimony of William P. Kelly.)

either party desires changes to be made, they shall notify the other group. In 1938 the employer group may have stated in their answer they desired to make changes in the contract, I don't know whether they even answered or not. I don't recall whether or not they received any such notice in 1939, they probably did, although I was not on the Committee in 1939. The contract provides that either party may give notice to the other.

At the present time there is no non-beneficial mill. A non-beneficial mill is one whose laborers are affiliated with the United Brotherhood of Carpenters, but which are not entitled to the use of the Union Label. A mill employing union men not paying a certain wage is not entitled to the label, but the men [627] may, nevertheless, be members of the United Brotherhood of Carpenters and Joiners of America. Their benefits depend on the type of organization. "Non-beneficial" has been done away with and now they are either semi-beneficial or beneficial. Those that are semi-beneficial have the use of the Union Label, the ones that don't have the use of the Union Label is where the conditions in the plant do not come up to recognized standards required in order to get a label. Wages is one of the main standards. Otherwise, the men in such a mill are full-fledged members of the Brotherhood.

I don't believe there is any such mill at the present time in the Northwest. Whether there have been such mills in the past four years in the Northwest I am not qualified to give an opinion.

(Testimony of William P. Kelly.)

The last paragraph of Paragraph 16 in the 1936 negotiations beginning: "Nothing herein shall be interpreted", was brought in at the suggestion of the employers. I believe it was Mr. Ennes who specifically suggested that clause and insisted upon its insertion. My best recollection is that it was Mr. Ennes and wasn't Mr. Hart.

Dowels, the first of the exempted list, are manufactured in any plant that has a dowel machine. They are manufactured in quantities in the San Francisco Bay Area. In San Francisco the Eureka Mill has a dowel machine. That is the one I worked in, I am familiar with that one. I worked there for a long time so I wouldn't be familiar with the machines used in any other plant.

Panel stock is manufactured in the San Francisco Bay Area in small quantities for special orders. Pacific Manufacturing Company in Santa Clara manufactures a quantity of stock panels. A small plant is here in San Francisco that sawed veneer, only a small quantity though. [628]

They can make plenty of pine, redwood and Philippine mahogany doors here. We can make plenty of two-light windows. Panel stock is usually for detail panels, what they call specials. It has a core with the veneer glued on both sides to make a panel, either for a table top or a wall panel, or anything else it might be used for. We could manufacture them all locally. There was a mill in San Francisco that manufactured them.

(Testimony of William P. Kelly.)

Lumber, rough or surfaced, is all bought, wherever the mill owners buy it, from a saw mill or from the broker or whoever it is that sells it to him. It comes in from outside the Bay Area.

Sheathing is a low grade of lumber that may come in surfaced or may be surfaced here.

Flooring is made here in small quantities, not very large.

Siding and clapboard is all manufactured here in quantities.

Shoepping is manufactured here. Tongue and groove, also.

Dowels was put on the exempt list because they come in different types, one type is manufactured here. I don't know of any machine in the Bay Area that makes another type, but that particular type is used somewhat by some of the mills for they prefer it to the type that is manufactured here. The part that isn't manufactured here is a small board with a circular ridge running around it to hold the glue. The type we manufacture here has a straight groove rather than a circular groove.

Dowels were put on the exempt list because one particular kind, not manufactured in San Francisco, was preferred for certain purposes. To the best of my knowledge, which is very little, that type comes from the Southeast. [629]

Redirect Examination

When we were negotiating in 1938, when we put in our demands, we asked for wages comparable

(Testimony of William P. Kelly.)

to other building trades crafts and after considerable discussion, the employers requested us to put on paper what we were really asking for, and Defendants' Exhibit S for identification was drawn up in the form of a memorandum and was submitted to the employers as our demands.

Thereupon Defendants' Exhibit S was introduced in evidence and read as follows:

" 'Memo. #1

" '1. On and after June 15th, 1938, the minimum wage scale for Journeyman Cabinet Makers, Bench Hands and Millmen employed in the operation of woodworking machinery will be the same as agreed to by the B.C.D.C. of C. for the Carpenters.'

"May we stipulate that is Bay Counties District Council of Carpenters?

"Mr. Burdell: Yes.

"Mr. Routzohn (reading): " '2. Six hours shall constitute the regular work day between A.M. and P.M. Five days shall constitute a regular working week from Monday to Friday inclusive.

" '3. The rate of wage for all overtime work shall be double time. Work on Saturdays, Sundays and Holidays from 12 midnight of the preceding day shall be paid for at the rate of double time except that Saturdays and Holidays shall be non-work days. Recognized holidays are—New Year's Day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Admission Day, Armistice Day, Thanksgiving Day and Christmas.

(Testimony of William P. Kelly.)

“4. Shift work to be same as Carpenters.

“5. All foremen and all Superintendents giving orders to the men shall become members of the Union.

“6. Employers or Firm Members, that is, those having direct interest in the business and working with tools of the [630] trade shall become members of the Union, and they must work the regular Union hours.

“7. An Apprentice shall be not less than eighteen (18) years of age and not over twenty-two (22) years of age when starting his apprenticeship. He shall undergo a course of training for four (4) years.

“The minimum rate of wage shall be:

	Per Hr.	Per Diem (8 hrs.) (8 hr. basis)
First three months	40c	\$3.20
After three months	46 $\frac{1}{4}$ c	\$3.70
After six months	52 $\frac{1}{2}$ c	\$4.20
After twelve months	58 $\frac{3}{4}$ c	\$4.70
After eighteen months	65c	\$5.20
After twenty-four months	71 $\frac{1}{4}$ c	\$5.70
After thirty months	77 $\frac{1}{2}$ c	\$6.20
After thirty-six months	87 $\frac{1}{2}$ c	\$7.00
After forty-two months	\$1.00	\$8.00
After forty-eight months	The Journeymen's rate	

“8. An apprentice, after having served an apprenticeship of 2 (2) months shall become a member of the union. All apprentices must attend a union recognized trade school at least four (4) hours per week.

(Testimony of William P. Kelly.)

"9. The employment of apprentice shall not exceed one (1) apprentice to every five (5) or major fraction thereof of Journeymen Millmen and Cabinet Makers combined at all times. Handicapped workers shall not be included in this computation.

"10. There shall be no limitation of the employer as to whom he shall employ or discharge, excepting that any working foreman, working Superintendent, Journeyman Millman or Cabinet Maker must have a Union Card or a permit card before being employed and apprentices within two (2) months become members of the Millmen's or Carpenter's Union. [631]

"11. Millwright work, consisting of installing of additional equipment and the maintenance of equipment, may be done at the convenience of the employer. The rate of wage for such work shall be the regular rate of wage of employees when employed on production, except that the rate of wage shall be the straight time rate without regard to the period or length of time employed on such millwright work or the day. This does not include grinding, changing knives, saw filing or setting up machines.

"12. Exempt list to be eliminated.

"13. When any Cabinet Maker, Bench Hand or Millman performs any work at the building site, the minimum scale of wages and other conditions shall conform to the Carpenters' scale as set up by

(Testimony of William P. Kelly.)

the United Brotherhood of Carpenters and Joiners of America. Under any circumstances, the minimum scale paid for such outside work shall not be less than the minimum shop scale. Traveling time and expenses to be provided by Employers, as per D.C. of Carpenters By-Laws.

"14. The work in progress and work for which contracts have been signed prior to June 15, 1938, shall be completed at the wage rates existing in plants at the time. This work is to be certified by a Committee having one (1) representative each for the respective Employers Association and Employees. This Committee is hereby authorized when they deem it advisable, and where agreeable to the specific shop to determine a date on which the new rate is to become effective, or to determine the number of man hours that may be employed under the old rate before the new rate becomes effective. Lists of uncompleted contracts to be filed on or before June 20, 1938.

"15. Business Agents of the Millmen's Union shall have free access to all shops during working hours at their own risk.

"Business Agent to have access to see pay-roll and time cards on request." [632]

Cross-Examination

(resumed)

By Mr. Burdell:

I am familiar with section 2 in the 1938 contract.

(Testimony of William P. Kelly.)

Section 8 of the Arbitration Award was incorporated in the 1938 contract as section 2. The reason for the adoption of section 2 as part of the agreement was that when the Award was handed down, that is, the Arbitration Agreement, it provided that the Award would incorporate such clauses as were already agreed to by the Conference Committee of the Negotiating Committee, and that the entire document would constitute the Award and the Agreement. The purpose of including section 8, which is this same section in the Arbitration Award, was that the situation confronting us in Oakland—the \$8-wage over there and the \$9-wage over here—would cause much confusion and give the employers on the Oakland side, who had been on all of the negotiations and had agreed to that part of the agreement that was in existence up until the time of the Award, would give them such a big edge over San Francisco that it was necessary to do something about it, and for some statement in the award that would cover the situation. It was to force the Oakland side to abide by the Award, due to the fact that Oakland employees were part of the Arbitration Agreement. It would cause the Oakland group represented by Mr. Edwards to abide by the Award. That was the main reason we had in our minds at the time. The \$9 applied in the entire district, so naturally it was the employers who were more concerned than we were. I would say the employers desired to have

(Testimony of William P. Kelly.)

it in, meaning the employers who were on the Arbitration Committee. Mr. Hart and Mr. Anderson were representing their group. Then it was incorporated in the contract. After the Arbitration Award there were not negotiations, because when the Award was handed down we executed according to the Arbitration Agreement, but there were some meetings to get it in final form. That was more or less of an office procedure—it [633] was not negotiations or anything like that. It was merely a matter of getting the thing together in proper form. I could not say who represented the employers for that purpose. Carl Warden and Jack Hart signed the contract for Lumber Products Association. I would say both took part in the meetings to draw up the final contract. J. G. Ennes represented Cabinet Manufacturers. East Bay Mill Owners Association was not a party—they would not accept it. In the negotiations before the arbitration, I believe Carl Warden and Jack Hart represented Lumber Products Association. J. G. Ennes represented Cabinet Manufacturers—it was not a suggestion, it was an order that section 2 of the contract be taken out of it. It was the order of General President William L. Hutcheson, of the United Brotherhood of Carpenters and Joiners of America. We had a meeting at the office of the Employers in the Call Building one morning, at which time Mr. Hutcheson was present, at the invitation of the Employers, and

(Testimony of William P. Kelly.)

when he read that particular article he said it would have to go out. To the best of my recollection there were present Messrs. Ennes, Hart, Hutcheson, Cambiano, Ryan and myself. There might have been one or two more—I think Harry Gaetjen was there. To the best of my recollection, Messrs. Ennes, Hart and Gaetjen represented the Cabinet Manufacturers and Mill Owners. There was opposition from the Employers to Mr. Hutcheson's order. They opposed the taking out of that section. The only instance I can remember is that Ennes took the contract that had been amended and threw it on the ground, and made some statement that he thought that the Unions agreed and they amended it, or some such words as that. Mr. Hart and Mr. Gaetjen probably said something, but that is the high light that stands out in my mind. My recollection is they were opposed to it as was Mr. Ennes. The meeting took place in the early part of October, 1938, in the office of the Employers in the Call Building. Some time between the first and fifteenth [634] of October. It is right that in the spring of 1936 the Unions notified the Employers of their desire to negotiate a new contract and the Unions at that time had certain demands which they desired to incorporate in the new contract. Better wages and shorter hours were the principal demands. There were others. We also wanted an all-out-and-out Union clause in there. I do not recall the amount of the increase

(Testimony of William P. Kelly.)

the Unions were seeking. It may have been a definite amount—I would have to see the letter. I don't remember whether we stated a specific amount or not. They will be in our minutes of Local 42. I would have to see the letter to be sure about 1938. The Exhibit introduced is not a memorandum covering the demands in 1938. This was written later at the instance of the Employers for us to put definitely on paper what we were asking for. That is not the original demands in 1938. In 1938, we were asking for the same wages that the carpenters were getting. The wages of the carpenters were fixed originally, so we were asking for a definite increase. The amount was not stated in dollars and cents—it was a definite objective. I do not remember whether or not that was a fact in 1936. The chief subject of discussion at the negotiations in 1936 was the demands for wage increase and better hours and also our desire for a straight Union Shop clause in there was one of the main subjects of arbitration. The Employer representatives always oppose our demands for higher wages. All representatives of each association opposed them in 1936—Messrs. Ennes, Edwards and Hart. They opposed them at length. They advanced arguments in support of their opposition to these demands. They had one argument all the time—that is, the meeting of competition. They claimed that they could not meet competition if they paid us any more money—that

(Testimony of William P. Kelly.)

the business will fly away and we will be out of work. That is their theme song continuously. That is in the negotiations we are having right now, the same thing—they cannot meet the [635] competition of the lower scale of their competitors in other parts of the country who are paying lower wages. It may have been part of my testimony that the exemptions in paragraph 16 were included at the request of the Employers because they could not be made in quantities in the San Francisco Bay Area. The main reason that they wanted that stuff in all of the time is because they could get it some place else cheaper and bring it in and have us handle it—that is the main reason. The Employer representatives never agree on what items should and what items should not be on the exempt list. Any particular plant or owner, or one way or the other, association, whatever it may be, it always wants to bring in the thing that he does not manufacture. If he does not manufacture it then he wants it on the exempt list. If he does manufacture it he wants it kept out. One of the reasons for the introductory portion of section 17 was that the Unions objected to taking down union material and doing certain work on it and then putting the label on it. Some millwork items are molding, frames, sash, case work, that is kitchen cabinets, medicine cabinets, doors and anything that goes into a building. Windows are sash. It is a matter of technical distinction between windows and sash

(Testimony of William P. Kelly.)

that one of them has panes and lifts up and the other one pushes out. It is not completed in a window until it is built and in the building. After they get through the sash department they are all the same, when they are being manufactured. If finished molding came into a planing mill, a mold on a window frame, that would go into the framing department and would be trimmed and built to the window frame, trimmed and cut to length. Finished molding that goes on a ceiling or a wall would be delivered to the contractor just as it comes, and no work would be done on that. The complete window frame is fabricated in the frame department of the planing mill. The frames are put together into a window, the various items which go into it, the [636] sills, casing, and one thing and another trimmed and nailed together. Door jambs, I think, practically always come in trimmed. There is no work to be done on them. They come in all bound up. There is nothing to be done on dowels. There are a few cabinets come in. They come in in parts and are assembled here, and having some panels, and not even that is trimmed. You can take, for instance, partly run lumber, that is, surfaced lumber, and fabricate it into a cabinet. Sometimes there is a lot of things done on doors. If it is a one-panel door, they come with one, two, three or any number of rails or panels on the door without changing the original door. They can take a one-panel, two- or three-

(Testimony of William P. Kelly.)

panel door and put a molding around it and make a molded door. For the ordinary door that goes in the home, the doors are used as they come in. Except in special cases, nothing is done with the exception of front doors which are practically all made in this area. Front doors are not on the exempt list. I testified that one of our objections was to taking non-union material and doing certain work on it and then being required to put the label on it. That was the particular objective of paragraph 16. That is what they finally got down to. Our objective at the time was to get a complete union label clause in the agreement and they would not go for it. We did not want to handle any of the stuff but finally we agreed to that particular section. The exemptions were put in at the request of the Employers. As far as exemptions were concerned we would work on them regardless of whether or not they had a Brotherhood stamp. Dowels did not have a stamp on them—they are too small. It is the duty of the men who run the mill of a union plant to see that the stamp goes on molding. Plywood very seldom has a stamp on it, even when manufactured by a mill that is entitled to use the stamp. The reason is that most of the plywood is two-sided—it can be used on either side and they do not want the face marred with any stamp [637] of any kind. The item of lumber shipped into the San Francisco Bay Area in greatest quantity is rough lumber. There is a

(Testimony of William P. Kelly.)

certain type of surfaced lumber surfaced two sides in the mill that is regarded as rough lumber. In other words, they call it shop lumber. It was possible in San Francisco in 1936, to obtain rough and surfaced lumber with the label on it. Rough lumber or shop lumber does not require a label at any time, because it would be quite a job to stamp every piece unless it was done by machine. Lumber surfaced two sides, or shop lumber, does not have a stamp. Lumber surfaced four sides, if it goes through a Union mill, should have the label on it. That is, it is entitled to the stamp. Sometimes the men in the plant are careless. It is as to dowels and lumber, rough and surfaced two sides, you cannot tell whether it was made in a Union shop by looking at it, because it does not bear a stamp. I testified that at the negotiations in 1936, there was some discussion about competition from mills paying a lower wage scale. It is the Employer representatives' argument all the time that they were in competition with these mills. There was a pamphlet put out in 1935 that took care of their stand completely, I believe, and I believe it was submitted by Local Union 42 here. The general theme is they couldn't pay us any more wages due to the effect of competition from mills located in other areas paying lesser wages. Just the flat statement they use all the time. That was the position of the representatives of the Employers who were at those negotiations and included Messrs.

(Testimony of William P. Kelly.)

Hart, Ennes and Edwards. It is not a fact section 16 was included in this contract to take care of that very situation, that is, to prevent these mills that were located in other areas and pay lower wage scales, from shipping their material into the San Francisco Bay Area regardless of the union label. We were not agreeing to prevent anything. The only thing we did not want to do was to handle [638] anything that did not bear the union label. We had no interest in preventing the shipment into this area of anything that had the union label, or any other kind. We are not in the business of preventing anything. Our position is, we want to handle stuff with the union label. It has been our position all the time. We have no objection whatsoever to handling anything or to working on anything or to having anything shipped into this area, as long as it has the union label. That is the position of the United Brotherhood of Carpenters and Joiners and we have taken no other position. It has been the position as long as I have been in the United Brotherhood—since 1908. I was a member of Local 42 in November 1940, and attended meetings of the union during that period. I probably attended the meeting on November 12, 1940.

Thereupon, the following testimony was produced as impeachment of the witness and the jury was instructed that it applies only to the witness.

I never said at the meeting of November 12, 1940, or at any time, "Six shops in Los Angeles

(Testimony of William P. Kelly.)

signed up for \$8 per day and Webber will have to be kept out of this district, label or no label, if the brothers want a check on pay day." I was apparently present at the meeting of January 23, 1940. I think I get the idea of this, as I remember it, I might state I do not express myself in the manner in which this is written. It says here: "Brother Kelly stated there is no exempt list and the mills are breaking down conditions by bringing in this material with the label that is being manufactured under a lower wage scale. The conference committee should tell the employer at the coming meetings that they are the one who is guilty of breaking down conditions by having this cheap labeled material shipped into this area." I may have made a statement concerning the employers in January 1940. I will say definitely that record is incorrect. I may have said something about that the rates are down, but something that did not convey the thing that— [639] Well, as I gathered from this, the employers had apparently been complaining of certain conditions. There is something down here about four sides stock coming in without a label. If I could just get some idea out of this as to what started the discussion. Now if there was any argument at all, as I can see it, I was stating that the mill owners themselves who were complaining to us were bringing in this material and then blaming it on to us.

I was President of Union 42 for some time. I attended meetings substantially regularly from

(Testimony of William P. Kelly.)

1936 until the present time. It is the practice of the union at each meeting that the minutes of the previous meetings are read and approved. It is correct that on January 30, 1940, the minutes of January 23 were read and approved. The fact they were read and approved at that meeting does not mean I was there and heard them read, and approved them myself. You understand, we have quite a bit of work to do, those who take an active part in the organization, and sometimes it is at the middle of the meeting before we get in. I may not have been at the meeting when those minutes were read, because they are read at the beginning of the meeting. The minutes of the November 19 meeting indicate the minutes of the special meeting, November 12, were read and approved as read. My testimony is that I did not say Webber would have to be kept out of this district, label or no label. Webber Company is located in Los Angeles, that is, their plant. I think possibly it is a year ago or maybe a little more when Webber was permitted to use the union label. I am quite familiar with the Webber situation from certain aspects. I am not sure, it was about a year ago they were permitted to use the union label. It was held up for quite a while and no agreement was signed due to the fact, I believe, the painters' end of it hadn't been signed up and so they didn't get the label until the entire group had been signed up complete. Naturally, there was a good deal of [640] discussion about it in November or December, 1940.

(Testimony of William P. Kelly.)

The Webber people were strictly non-union and on the unfair list for a long time, and naturally would be a subject for discussion. There was possibly a discussion about them being able to get, or getting the stamp or label in 1940, and it was possibly shortly after that they did get the stamp. I would say they used the stamp and had the stamp, but I could not definitely tell the date. I don't know when that agreement was finally completed. It was about a year ago so far as we were concerned. They had signed an agreement but the agreement was not completed due to the painters, as I remember.

Thereupon, the Court instructed the jury that the questions asked were known as impeaching questions for the purpose of impeaching or contradicting his testimony, and were to be considered by the jury as affecting only the credibility of the witness who made the statements.

I testified that the 1917 contract was used as a basis for section 16 of the 1936 contract. I went in the army on November 1, 1917. I am not familiar with the negotiations surrounding the 1917 agreement. I had nothing to do with it. I would not know a thing about the purpose of the provisions in the 1917 contract, from personal knowledge. When we were discussing in 1936 a straight union clause in the agreement, the employers brought to our attention that before 1921, when we did have contracts, we used to have articles that

(Testimony of William P. Kelly.)

could be used without the union label. They gave that as a reason why we should do it again. As I remember it, they were using various old contracts for a basis to work from. As I explained before, we were looking for a straight union clause contract and they were using section 1, article 2, of the 1917 contract. We were not interested in it—we didn't want it—but they insisted on their viewpoint, and finally worded it in such a way that would overcome some of our [641] objections, that is, bringing stuff in that was partly fabricated and so on, which we finally did accept. The difference in the wording of the contracts, it applies to different people. The Building Trades Council at that time made the agreements for the millmen and it was the Building Trades Council that agreed that their men out in the field would not handle that, whereas we were only agreeing with the mill owners that we wouldn't handle it. It is right that it says that we won't handle anything manufactured by a mill working contrary to the prescribed number of hours, and they won't work on anything manufactured by mills paying less than the wage scale here in San Francisco. That is the 1917 contract. Then it says we won't work on anything manufactured by mills employing other than union mechanics. That means they won't work on anything that is manufactured by a non-union shop. The 1936 contract says, "In the interest of standardization of rates of wages and working condi-

(Testimony of William P. Kelly.)

tions." "It is agreed that no material will be purchased from and no work will be done on any material or article that has had any operation performed upon same by saw mills, mills, or cabinet shops, or their distributors, who do not conform to the rates of wages and working conditions of this agreement." The provision in the 1917 contract relating to non-union mechanics and the provision in the 1936 contract, "or their distributors who do not conform to the rate of wage or working conditions of this agreement," mean the same thing. It is in there definitely, "that do not conform to the rate of wage and working conditions of this agreement." It is the same thing in different words. Naturally, a non-union mechanic or a non-union shop would not conform to working conditions of this agreement. It would be true in a literal sense that a union shop would not in any event conform to the working conditions or wage scales of the 1936 contract, but insofar as the United Brotherhood of Carpenters and Joiners and the use of [642] the union stamp, it would not be true. There are union shops that have a right to bear the union label that do not pay the same wage rates that are paid here in San Francisco. Each stamp bears a number. That is a representation indicating the district in which it was manufactured. Around here, the district would be the Bay Counties District of California. It is right that I testified I didn't ever have occasion to use the

(Testimony of William P. Kelly.)

term, "local stamp," because there is no local stamp. To use the expression, "local stamp," would be using the term in a loose manner, because he would be talking about something that was non-existent. I don't know what he would mean if he used it in a loose manner. There is no such thing. It should not be used in connection with the business of the union. It is non-existent—I don't see how it could. If it were used it would be a mistake.

According to the minutes, I was present at the meeting of Local 42, dated April 19, 1938. I presided at that meeting. According to the minutes, I was present in the chair during the entire meeting. There appears in the minutes, "Discussion arose on Wheeler-Osgood doors being molded and stamped with Local Stamp No. 6." That apparently meant that the Bay Counties District Stamp No. 6—if it had been stated properly—that is just the very thing that we were kicking about at that time. As I stated here a number of times, we were kicking about this very item of bringing in non-union doors, putting a mold on them, one way or another, and then having a stamp put on them—that is the very thing. The term, "Local Stamp No. 6" is used here.

"Q. Would you say that it had never been used at any time, properly or improperly, by a union man?

(Testimony of William P. Kelly.)

"A. Well, it would if used in the same manner as it was there."

The expression "local stamp" could be used there improperly and apparently has been used. It is written down there. I testified we had no agreement with regard to the shipment or use into this area of [643] millwork. Section 30 of the 1938 contract is the agreement in so far as the use of the stamp is concerned. There is another clause added to that at the instance of the Employer that has nothing to do with the clause. "The recall of this label shall be prima facie evidence of the cancellation of this agreement with respect to the shop from which the label is withdrawn." Section 30 means that the label is the property of the United Brotherhood and shall remain the property and may be recalled at any time it is being used at a disadvantage of the organization. That is not a promise to the employers to enforce the stamp. It is my testimony that at no time have I ever been interested in preventing union-label-bearing material from being shipped into this area, whether that material was manufactured at a lower wage scale or not, if it bore the label.

I was present at the meeting of November 19, 1940. The minutes read, "Brother Kelly asked Brother Ricketts to support the new paragraph the millmen are going to try to add to the Brotherhood constitution and laws. The shipping of low wage material into a district where higher wages

(Testimony of William P. Kelly.)

are being paid. Brother Ricketts stated he will help the millmen any time," and gave his address, and that was the New Lakeland Hotel, in Florida. The convention was held in Florida, and we were interested in strengthening the use of the label and in some respects this low wage material. We want to get the standard of wages higher in order to gain the use of the label. At the present time the level is at 75 cents, but we wanted the level raised, and when the secretary used the word "shipping," we are not interested in the shipping in any manner, shape or form. We were interested in getting the level of the wages before a shop would be entitled to the label. There might have been a few small shops in the Bay Area in 1940 that were not paying the wage level provided for in the 1939 contract. It is right there were very few. [644]

Cross-Examination

By Mr. Faulkner:

In 1936, when paragraph 16 was prepared, one of the first demands of the unions was that they would not work on anything that did not bear a union label. One of our main demands outside of wages and hours was the use of the stamp. There was never a time when we did not demand the use of the stamp. It is a fact there had been a long period of time when the unions did not have a closed shop agreement. We had individual agreements; part agreements that did not amount to much.

(Testimony of William P. Kelly.)

I would say that the first closed-shop agreement of any account was in 1935. In 1936, we were getting a little further along in our closed-shop efforts here. After the request or demand that we would not work on any non-labeled goods, the Employers refused it. It is a fact that our negotiations were not getting any place and we almost abandoned them and went on strike. Mr. Hart told us in substance at the time that the 1917 agreement arose in this transaction, we were demanding more than when we had the town in the palm of our hand in 1917. That is when the Employers brought out the 1917 agreement showing we were making greater demands in 1936 than we had in 1917. That is how we started discussing a medium and came to an agreement on that subject. They finally got so far along they presented that clause and we finally accepted it—it shows on its face. The clause we accepted was the first paragraph, the exempt list in the paragraph relating to the things on this list. I read that paragraph through.

At the meeting in 1938, at which some international officers were present, my recollection is Mr. Ennes threw the contract on the floor. He very clearly indicated that if any union man did not think it was binding on them, he did not care whether the contract existed or not. I have testified that the [645] main purpose of paragraph 8 of the Arbitration Award incorporated in para-

(Testimony of William P. Kelly.)

graph 2 of the 1938 agreement was to cover this \$8 day and \$9 day business. In October, 1938, when we amended that agreement, it ceased to be the subject of discussion, because the General President ruled it out. It is correct, I testified that the Employers wanted it in. I don't think there was any reason different from the original reason. At the time the General President was here there was a strike in Oakland and if my memory is correct, both of those were at the same time, the strike in Oakland and the meeting. All of the facts relating to both the 1938 contract and the amendment are closely related, not only as to point of time but in the actual happening. It is not correct that the wage scale, set forth in the 1938 agreement as originally written, was only paid for one day or one week—some of them paid it right from the first day it was effective. The cabinet men paid for the entire time, but there was a setup whereby a separate check was signed by the employee which he was given credit for by the local union against his assessment. There was an assessment of \$50 placed against each member of the local union in order to pay the difference in the old and new work. The contract called for the wage to start from the effective date. The unions in 1938 were attempting to unionize every place that applied to millmen. In addition to the men represented by Mr. Hart of the Lumber Products Association and Mr. Ennes for the Cabinet Insti-

(Testimony of William P. Kelly.)

tute, we signed a great many other shops to union agreements. The agreements are identical with the agreements with the associations with, I believe, a little additional paragraph at the beginning.

"Q. I show you here some exhibits that have been produced, I am not going to introduce the exhibits, your Honor, but I would ask Mr. Kelly if he would indicate the firms that were unionized in 1938, with contracts identical with the ones here in evidence. [646] The firms are on the top of each one of these.

"Mr. Burdell: Do you mind if I look at them a minute?

"Mr. Faulkner: No.

"A. Atlas Stair-building Company, that was one signed August 15, 1938.

"Q. Signed what date? -

"A. August 15, 1938.

"Mr. Burdell: Do you have a list of those?

"Mr. Faulkner: They have been in and out of our possession, but they came in here at the trial.

"The Court: Why don't you make a list of them and you can save time.

"Mr. Faulkner: Suppose I read them off. There are really not very many.

"The Court: Very well, read off the names.

"Mr. Burdell: I am going to object to it, because I do not see any materiality, and I do not see any foundation laid.

"Mr. Faulkner: These came out of the Union's

(Testimony of William P. Kelly.)

possession. They are original contracts, aren't they, Mr. Kelly?

"Mr. Burdell: I take it these will show these companies were unionized in 1938, but is there anything to show they were not unionized before?

"Mr. Faulkner: They may have had a contract before.

"Mr. Routzohn: Some of them did not get in until 1940.

"The Court: I cannot see that they are material. I asked you before to make a list of them and you can make your offer and I will rule upon it.

"Mr. Faulkner: I will read the names off, it will only take a short time. * * *

Thereupon, the names of some forty firms with 1938 contracts were read.

"The Court: Are any of those firms whose names you have read corporations, partnerships, or individuals, defendants [647] in this case now on trial?

"Mr. Burdell: One is, your Honor, possibly two that I know of. The Brannan Street Planing Mill and Eureka Sash, Door & Molding Company.

"The Witness: That is a different Eureka mill.

"The Court: Those are separate contracts made by the unions with persons who are in no way involved in the trial now before the Court?

"Mr. Faulkner: Yes, except that they signed the identical contract.

"The Court: Yes.

(Testimony of William P. Kelly.)

"Mr. Faulkner: And the testimony is offered for the purpose of showing that at the time, in conformity with the position taken by the respective sides, that paragraph 8 of the Arbitration Award, paragraph 2, of the Agreement, was to provide a condition of unionization of plants in this area. In other words, there was an attempt to unionize, and the only distinction between the contracts they ultimately entered into and the contract actually entered into, I would like to read into the record, it is only a line.

"The Court: Read it.

"Mr. Faulkner: 'Agreement for the purpose of promoting the mutual interest of the parties signatory hereto between (blank),' that is, between the various people whose names I have read 'and the Bay Counties District Council of Carpenters as follows:

" 'The wages, hours and working conditions of the Cabinet Makers, Carpenters and Millmen employed by the' different firms by whom the agreement was signed—'will be as stipulated in the agreements between the District Council of Carpenters, Millmen's Unions No. 42 and 550 and the Lumber Products Association, Inc. and the Cabinet Manufacturers Institute, Inc., Northern Division, [648]

" 'which is as follows'—

and then the Exhibit 132—

"The Court: Are you going to read any more of that?

(Testimony of William P. Kelly.)

"Mr. Faulkner: No. In other words, Exhibit 132 is mimeographed and became a part of every agreement with these people.

"Mr. Burdell: I desire to move to strike every thing that Mr. Faulkner has read, because it does not prove what he wants to prove, it is immaterial.

"The Court: I think it is immaterial, it may go out. Do I understand you are going to offer these in evidence?

"Mr. Faulkner: No, I have completed my proof, I think it is relevant in this case. The Government says that paragraph operated to provide for a certain situation; and here are constant attempts to unionize other people. The position we have taken is that that paragraph had to do with the local condition where competitors of these people would be paying a different rate, and as long as that competition existed it is evidence by itself that these people were not unionized. I think it is within the issues of the case.

"The Court: Have you any motion that you wish to make?

"Mr. Burdell: Yes, I move to strike the whole thing on the ground it is immaterial, irrelevant, and incompetent, and no foundation laid, assuming facts in evidence and not within the issues of this case.

"The Court: The motion is granted."

"Mr. Howard: Could I say one thing? These

(Testimony of William P. Kelly.)

pleas in abatement which your Honor is considering, I was wondering if your Honor could indicate when there might be a ruling, so that we may consider the question of presentation of the witnesses.

"The Court: I can rule now, if you wish.

"Mr. Howard: Has your Honor passed on it? [649]

"The Court: No, I have not passed on it, but I am ready to rule. It seems to me that this motion is identical with the one I passed on some time ago, and I am ready to rule now, if you wish to have me do it. I will state in that regard that my thought is that this motion that you are now making is the identical question upon which I have heretofore ruled. If it becomes necessary for me to rule on this motion that you have lately made, if you think you would like to have me do it for the sake of the record now, I am willing to do it. My thought in that regard is that it might be proper in the event there was a conviction in this case of those defendants whom you represent, it might be proper to raise the question upon a motion for a new trial, or upon a motion in arrest of judgment, or something of that kind. If it is going to delay the trial in any way I will make a ruling.

"Mr. Howard: I would not say it would delay the trial by lack of a ruling.

"The Court: I have not had an opportunity

(Testimony of William P. Kelly.)

to read all of the record, I have read some of the evidence taken before the Grand Jury, because I indicated to you that I would do it, but as far as I have gone I feel I have already ruled upon the motion.

"Mr. Routzohn: We would like to have your Honor read the Grand Jury evidence.

"The Court: Yes. If you can wait until tomorrow morning I may have an opportunity to read it this evening.

"Mr. Howard: If we could have a stipulation from the Government, that there won't be any effect on the proceeding by the presentation of witnesses—

"The Court: I suppose, Mr. Clark, you will stipulate to that?

"Mr. Clark: Yes. I told Mr. Howard we would do that, if he put them on the stand it will have no effect on his position. [650]

"Mr. Howard: It will have no effect on his position in the case relative to the plea?

"Mr. Clark: That is correct.

"The Court: Then you are not in a hurry for a ruling, in view of that stipulation?

"Mr. Routzohn: Tomorrow will be satisfactory, your Honor.

"The Court: All right, I will finish the reading of the testimony tonight."

"Mr. Faulkner: Your Honor, at the time of the noon recess, Mr. Burdell had made an objection

(Testimony of William P. Kelly.)

which your Honor sustained. In connection with that objection, one of the grounds stated was that a proper foundation had not been laid in identifying these papers. I don't want to pursue the matter any further in the light of the Court's ruling, but that would be a sound objection—in other words, I had not completed the identification of the documents. If Mr. Burdell will withdraw that and the record will clearly show your Honor's ruling was based on the materiality, I won't have to devote any more time to it. I think that was your Honor's position, was it not?

"The Court: Yes.

"Mr. Faulkner: Will you withdraw that ground of your objection?

"Mr. Burdell: Well, my objection is based on the fact it is not material and also that no foundation as to materiality has been laid.

"Mr. Faulkner: Well, you did not mean that was not any foundation that these were original agreements that were entered into on the day they bore date?

"Mr. Burdell: No, that is not part of my objection.

"Mr. Faulkner: I think that clears it up.

"The Court: Yes." [651]

I have been president many times of Millmen's Union 42. I have worked with the tools of the trade. When we say Millmen's Union, we mean cabinet makers and all. I would say the millmen

(Testimony of William P. Kelly.)

do not install material that comes in here from the outside. Some of them do, however, install material that is produced in a particular shop. The carpenters as a rule make the installation of the material that was not produced in a particular shop. The agreement we had been talking about is not an agreement with the carpenters.

EMIL H. OVENBERG

called as a witness in behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Howard:

I am a member of Millmen's Union 550, employed at the present time by Eureka Sash and Door factory mill, San Francisco. I have been engaged in that type of work over 30 years, taking in my apprenticeship. I have belonged to Local 550 for 30 years. I have spent all that time in this locality working with two or three mills. I am starting on my twenty-first year with Eureka Mill. When I became a member of Local 550, I took the oath that has been prescribed here. I was an active member in 1935. In 1935, you might say that we hadn't recovered from the depression and I can look back over my membership in 550 when our membership had dropped

(Testimony of Emil H. Ovenberg.)

down to a very small amount—just a few faithful members who stayed in the organization. I could give a fair estimate. I would say it wasn't over 120 members in 1935. We have about 600 members now in good standing. In 1935 I would say the wage scale was \$5.60. In previous years it had been higher. It had dropped very much in the years preceding 1935. In 1935, our Local Union determined upon what is called a trade movement. In 1935, we determined to negotiate with our employers. We [652] started a movement to organize and also make demands on the bosses. We didn't meet them as a group. We started our movement and we met some of the mill owners and we met a lot of them individually and made demands on them. Prior to our negotiations in 1935, we did not have a union contract with employers. I can say, of course, in 1935 and all during the depression some were much fairer than others and would employ more men and pay a better scale, but we had no union scale.

In connection with our negotiations, I was named to act for our local. We had a meeting and a committee of three was appointed from 550. As my recollection goes, Brother O'Leary, Thomas Bennett and myself were the members. I went around myself individually with the business agent and met some of the mill owners, but we did meet Nathan Edwards, a mill owner, and Mr. Gurken, then manager of the National Mill in Oakland, at

(Testimony of Emil H. Ovenberg.)

the Oakland Hotel. The employers were not represented by an association. They were individual mill owners meeting with our committee, purporting only to represent themselves. There were certain union demands made by us. Even in 1935, we wanted a closed shop and we asked for a wage scale of 80 cents for the sash and doors and 90 cents for the mill. Those demands were not acceded to. Our men went out on strike. We called the men out on strike. They were on the street for ten or twelve days, and I will use the word "compromise"—an offer was made of 70 and 80 cents, with a vote of the union. We accepted the 70 and 80 and the men went back to work. There was also a strike in San Francisco at that time.

My answer would be "No," we didn't have a similar written agreement in Oakland to Exhibit N, dated June 27, 1935. In 1935 was our first feeble attempt in organizing and fighting the bosses, and 42 and 550 while acting jointly, we were still far apart. The other side of the Bay signed up for 80 cents and practically broke down the 90-cent demand, and so as to get it [653] uniform 42 voted for the same agreement. There was practically the same agreement signed on the other side, but the wording was a little different. We hadn't got together as an organized group on both sides. That is the best of my ability to explain it, but so far as the agreement on hours and wages and working conditions and demands on the bosses, they were identical.

(Testimony of Emil H. Ovènberg.)

In 1936, the committee on negotiations was just two from 550, Brother O'Leary and myself. Negotiations were instituted in the year 1936 with our employers. It seems to me it was the early part of the year. Most of our negotiations for the 1936 agreement spread over a period of from 6 to 8 or 9 weeks, so I would say that was probably in May. Those negotiations involved Local 42. We were jointly together—same demands. They involved mill owners and cabinet makers on both sides of the Bay. We met jointly in negotiating. The union demands were for shorter hours, more wages, a one hundred per cent closed union shop. Those demands were not acceded to by the employers.

In 1936, there came that exemption list and also the famous paragraph 16, I think it is, and we couldn't agree on our wages, and that went to arbitration, and the Arbitration Board was set up but did not go because the proposal was made for settling. After an arbitrator was selected, there was a meeting of minds between the employers and employees. The closed shop has always been our policy, that we were strong in fighting the bosses for a hundred per cent closed shop. I think it was Jack Hart, who was sitting in as a representative at the time, came up with an old agreement. I think it was 1917, or something like that. That was before my time, but that was the time of the agreement, and they came up cold and waved it in our faces and said that

(Testimony of Emil H. Ovenberg.)

in our palmiest days in the earlier years we did not have a hundred per cent union condition and we were demanding more at this present year than had been [654] acceded to in those days, so they wanted the exempt list, and that paragraph then went in and the unions acceded to it. I will use the word again: a compromise on what we wanted, one hundred per cent, and their unwillingness to accept that. One hundred per cent union or working conditions is that we will not work on any material unless it is 100 per cent manufactured any place under the same hours and working conditions that would prevail in this vicinity.

I didn't contribute any of the actual draftsmanship of the language of paragraph 16 and paragraph 17 of what is plaintiff's Exhibit 131—the 1936 agreement. As a negotiator I was simply a millman and working in the mill during the day. I worked at my trade all day and stayed at these meetings until twelve or one o'clock at night. We were negotiating at night in the 1936 agreement. We didn't negotiate that during the day. I did not personally contribute anything to the language of this paragraph. During the negotiations there were plenty of complaints concerning operations that had occurred under the previous agreement of Local 42 and its Employers.

In our demands on the bosses and in fighting them in 1936, there was quite a little conflict there, quite a few of the mills around the Bay Area were still organized and we had an agreement where they were supposed to be 100 per cent union, yet

(Testimony of Emil H. Ovenberg.)

in some shops engaged in the construction of a window frame, perhaps there would come in a lot of casing that would come in and be fabricated in the framing department, and the union stamp would go on it, and it was not 100 per cent union product. In other words, the bosses were taking advantage. Redwood Manufacturing Company in Contra Costa County was not a union organization at that time. When we commenced negotiations in 1936, Pacific Manufacturing Company of Santa Clara was not. There were other non-union shops around the bay. Some of them [655] were in existence in 1936. The 1936 agreement was the most progressive negotiations, and we were sinking down at the time. We made a great deal of progress in 1936. There might have been a few, but we got a pretty good hold in our fight with the bosses in 1936, as far as the unionization of the mills in this Bay Area was concerned.

There was a conflict up north between the C.I.O. and A. F. of L., which commenced in the early part of 1937. That gave rise to a new situation in the Northwest. The C.I.O. were going up there and trying to organize the men, and we had gone through the depression. They were making inroads, and the General Office sent organizers up there and the men were put into semi-official organizations, at a very reasonable initiation, and that was the reason of the semi-beneficial members. Also, at the same time, they brought a lot of ma-

(Testimony of Emil H. Ovenberg.)

terial down into this district, which we fought and kept out. This development in 1937 did not exist at the time of these negotiations. It was not foreseen by anyone at that time. There was plenty of dispute, plenty of controversy, over the exempt list, but as I said before, on the insistence of the bosses and Mr. Ennes, for his Cabinet Manufacturers, who wanted this material, emphatically said he would be interfered with, and that exempt list went in as a concession, as I say, from us, that we were always, and have always been, and it has been our policy and the policy of the General Brotherhood, and also of the District Council, and of the Millmen's Union, to further the use of the stamp and closed shop, 100 per cent.

"Q. Now, the 1936 agreement, then, resulted in an increase in the wage scale, did it not, to the employees? A. It did, yes.

"Q. What was the movement of living conditions at the same time?

"Mr. Howland: I object to that, if your Honor please, on the ground it is irrelevant and immaterial, and having [656] nothing to do with the issues in this case.

"The Court: Sustained.

"Mr. Howard: If your Honor please, if I may have the privilege of this suggestion relative to the indictment, there is a charge here that there was some question of gift in the making of the scale. I think that we are entitled to all of the

(Testimony of Emil H. Ovenberg.)

facts bearing on the question of how that scale was fixed."

I became a member of the so-called Conference Committee constituted of members of Local 550 and Local 42. That was a so-called Joint Conference Committee, which is referred to in the provisions of the contract of 1936. It did not involve any of the employers. We have so many committees, I attend so many meetings, we have a Conference Committee composed of five members from 550 and 42, and from that Committee elected from the local unions, the five members select the Negotiating Committee, which is composed of two members. I think now I was off the tack, — I thought you were referring to the Joint Conference Committee set up for minor disputes between employers and the unions, that are ironed out by that Joint Conference Committee's actions. I call it the Joint, but the Conference Committee of 550 and 42, which is the Joint Conference Committee, they would never meet the employers, only the Negotiating Committee, which was then appointed by and from the membership of the Conference Committee. I was a member of the Negotiating Committee.

In addition, we have a so-called Joint Conference Committee composed of Employers and Employees to settle disputes under the contract which might arise. How many times a Joint Committee between Employers and Employees actually meet,

(Testimony of Emil H. Ovenberg.)

I could not say, but I am positive in my answer that I attended two. I know of no instances of any other meetings of that body. I was a member of it.

In carrying out the 1938 contract, I conducted our negotiations with the mills described. I am not aware of any refusal [657] to work on the part of employees upon any material which was on the exempt list under that contract.

In 1938, negotiations were commenced relative to an employer-employee agreement. I was a member of the Negotiating Committee. There was Brother Kelly and, I think, Brother Helbing, and for 550, there was Brother O'Leary and myself. We met with the employers. Our demands then were for shorter hours, more money and also a closed shop. Our demands were not acceded to. We were in constant debate, squabbles and what not for a good many days there, and weeks, and it finally went into arbitration. The two locals and the employers agreed upon arbitration. That was the arbitration conducted with Judge Walter Perry Johnson as the neutral arbitrator. I had nothing whatever to do, no participation in the arbitration proceedings whatever. Dispute arose between Local 550 and its employers concerning application of the scale fixed by the arbitration. There was plenty of dispute by the representative of the Oakland employers, Mr. Nat Edwards. The scale fixed by the arbitration

(Testimony of Emil H. Ovenberg.)

was \$9 for eight hours work a day. The actual scale prevailing when we started the 1938 negotiations was \$8 a day for eight hours. The bosses over there would not pay \$9. Nat Edwards was very firm on no increase. The men were out on strike and a representative of the General Office came here, got the parties together, a compromise of \$8.50 was offered to the men at that time, including bringing in the Pittsburg plant, in Contra Costa County, and the Santa Clara Mill, the P.M. That was the aftermath from the settlement of the whole situation, as briefly as I can put it.

Mr. Dave Ryan went to the Home Office, in connection with the strike, to see General President Hutcheson. For men to go on strike, we had to do it legally. We had to have the sanction of the District Council and the General Office and conform to laws and by-laws of the General Office. We request [658] financial aid and unless we comply with all the laws, and the picture is laid before the President. We were hastening all of this movement, because a labor dispute was going on and it involved all the other groups, all of the counties and their building construction, and that was the haste in Secretary Ryan going back to the General Office to get this matter settled peaceably as far as possible, without going into any lengthy strike.

Joseph Cambiano was General Representative when he was here, appointed by President Hutcheson of the Home Office. He represents all of Cali-

(Testimony of Emil H. Ovenberg.)

fornia and maybe all of the Pacific Coast, wherever the General Office, I think, desires to send him. The six-county setup was handed down by the General Office that hours, wages and working conditions must be uniform in the six counties. The compromise went to \$8.50 and that is the scale that existed at the time of the current arbitration, going on right now, commenced. The present scale is \$8.50.

"Q. What is the scale for Millmen in Fresno?

"A. \$9 a day.

"Q. What is the scale in Vallejo? A. \$10.

"Mr. Burdell: I object to that and ask that it go out.

"The Court: Yes, it may go out. Objection sustained.

"Mr. Howard: If your Honor please, we will make an offer of proof, then, to include Stockton and Los Angeles, to show that the scale of Millmen at the present time is greater in all of those localities than here.

"The Court: The offer of proof has been made.

"Mr. Burdell: We object to the offer of proof on the ground that the wages and standards of living in localities other than the Bay Area are utterly immaterial and irrelevant.

"The Court: Sustained.

"Mr. Howard: Q. What is the existing Carpenters' wage scale? A. \$11 a day.

"Mr. Burdell: We object to that. [659]

(Testimony of Emil H. Ovenberg.)

"The Court: Yes, that may go out. Objection sustained.

"Mr. Howard: Q. Are lumber handlers a part of your craft?

"A. They belong to the same Brotherhood, they are members of the United Brotherhood of Carpenters and Joiners of America.

"Q. Are they skilled or unskilled workmen?

"Mr. Burdell: I object to that on the ground it is immaterial, irrelevant, and incompetent.

"The Court: Sustained.

"Mr. Howard: Q. Do you know the scale prevailing at the present time for lumber handlers in this locality?

"Mr. Burdell: I object to that on the ground it is irrelevant and immaterial to any issue in this case.

"The Court: Sustained."

In our contract of 1936, we would refuse to work on unfair material, and also in the contract of 1936, we would refuse to work on union material made at a lesser wage scale, or than the wages or working conditions that were in our contract in 1936. Conditions changed in 1938. Between 1936 and 1938 certain material was turned out by union organized mills which had a low wage scale. Refusal to work was on account of our contract in 1936 that we would refuse to work on any material made at a lesser wage, hours or working conditions, and

(Testimony of Emil H. Ovenberg.)

we had a right at that time in 1936 to do that. It had reference to union as well as non-union material in 1936. It is true that this question of low wage scale material did not arise until 1937. The picture changed in 1937. There was a difference of opinion between the General Office and our local unions here in 1937. Our General President Hutcheson ruled that any mill work made in a union mill would have the label and if made at a lesser wage scale and came into this district, we would have to work on it, and as I said before, on account of the fight in 1937, between the C.I.O. [660] and A. F. of L., they let the bars down. On account of the fight by the C.I.O., we thought we would fight the C.I.O. on the subject matter, just as hard here as we will fight the bosses. The C.I.O. situation did not exist relative to the 1936 contract. It is our continued policy to get a hundred per cent condition working only on union material, members of the Brotherhood. The other question which gave rise to a difference of opinion in our internal organization came at a later time in 1937, under a ruling of the General Office.

“Q. Now, with reference to all of your activities as a negotiator, or as a representative of your organization, or as an individual, were you acting with the intent to promote the interests of yourself and your organization?

“A. Sincerely and honestly—

“Mr. Burdell: I object to that and ask that the answer go out.

(Testimony of Emil H. Ovenberg.)

"The Court: Yes, it may go out.

"Mr. Burdell: I object to it as calling for the opinion and conclusion of the witness, and immaterial, irrelevant to any issue in this case.

"The Court: Sustained.

"Mr. Howard: If I may call to your Honor's attention, I believe that the question of intent is vital here, and exceedingly material. Your Honor will bear in mind paragraph 29 of the indictment, which has a direct bearing on this issue, in which the charge is made that these men were not intending to promote their own interest, or with an intent of promoting the objective of labor. I have cases here, your Honor.

"The Court: I have cases here, too. The ruling will stand.

"Mr. Howard: May I, in order that there be no question about the form of the question, then, make this offer of proof, that we offer to prove by this witness, who is a union negotiator [661] or representative of the union in connection with the negotiation of the disputes with employers in the period of 1936 and again in 1938, that he intended only to act in promotion of his union demands and objectives. I wish to make that as an offer of proof.

"The Court: Any objection?

"Mr. Burdell: Yes, we object to that as having no probative value at all, any question of intent is immaterial to this case, and further the intent

(Testimony of Emil H. Ovenberg.)

which is included in this offer is not consistent with any such intent as may be necessary to sustain the allegations of the indictment.

"The Court: Objection sustained.

"Mr. Faulkner: Your Honor is not ruling intent and motive does not enter into a conspiracy charge?

"The Court: Absolutely, that is what I am ruling, in a conspiracy charge.

"Mr. Faulkner: That intent does not enter into it?

"The Court: The intent is immaterial here at this time. That is what I am ruling.

"Mr. Faulkner: Very well."

As an individual or as a representative of my union organization, I had no other or different agreement than the written agreements which have been discussed in court and introduced in evidence. I, emphatically, did not have any oral agreement on any subject with the employees or employers. I had no secret agreement.

Cross-Examination

By Mr. Howland:

My best recollection was that during the period from 1936 to 1940, I was not a member of any committees of Local 550 in addition to the Conference Committee and the Negotiating Committees. I am on so many meetings and committees—take the sick committee, I am always visiting some sick member,

(Testimony of Emil H. Ovenberg.)

something [662] like that, but as far as any active committee, so far as meeting employers or anything like that, no.

I have been a delegate representing Local 550 to the Bay Counties District Council of Carpenters. Was vice-president of the Council, to the best of my recollection, from about 1922 to 1930. I went out one year as vice-president and went in again as president, but haven't held any positions since.

There was a Conference Committee from 1936 to 1938, between 550 and 42. That committee had nothing to do with direct dealings with employers. The minute the six-county setup came into the picture they had their representatives in a joint conference committee. I don't want to get mixed up with the joint conference committee set up to settle minor disputes between employers. Since the six-county setup in 1938 there has been a joint conference committee between all the locals in the six counties.

In the 1936 contract and negotiations, I added nothing whatever to the language of those paragraphs. I meant myself, personally. There were much more capable men on our side and on the employers' side to write those paragraphs up in our agreement. I recall what part of the year the change of policy occurred, during the year 1937. I know I met the general president here in San Francisco when he handed down that ruling, and I would say May or June,—the middle of the sum-

(Testimony of Emil H. Ovenberg.)

mer—some time around there. I am a little hazy, because I figured in the last five years, I guess, I had been in about five thousand union meetings and conferences.

Cross-Examination

By Mr. Faulkner:

I am employed as a millman. We won't work on non-union material outside of the exempt list which we have allowed our members to work on. I know of no instance where a union man ever [663] refused to work on material that went into cabinet shops as distinguished from the mill, whether it was on the exempt list or not. I know a great many articles and a great deal of material comes into cabinet shops not on the exempt list and haven't a union label, and they are worked on.

DAVID H. RYAN

called as a witness in behalf of defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. Routzohn:

I have lived in San Francisco since 1904. I will be 70 next May. I am a carpenter. I began as an apprentice in 1889. I am a member of Carpenters' Local Union 483, San Francisco. I joined in 1904 and have been a member ever since. I was vice-

(Testimony of David H. Ryan.)

president and president one term. I am secretary of the Bay Counties District Council of Carpenters and have been for fourteen years. I sat in the 1935 negotiations as a representative of the District Council of Carpenters. The procedure is that after a local union or unions affiliated with the District Council of Carpenters have arrived at an agreement with their employers in their particular branch of the craft, that is submitted to the District Council for approval, and when approved is sent to the General Office as a matter of record and for approval, if there is any question about it.

In the 1935 negotiations, the negotiating committee was selected by the two local unions, and as secretary of the District Council I sat in there on all these meetings when they requested me to. I was a negotiator in the 1936 contract. That lasted, I would say, approximately two or three months. I signed the 1936 contract for the Bay Counties District Council of Carpenters, as one of the parties. At the time the negotiations opened in 1936 upon the unions' request for modification, we had [664] had a union-shop agreement with the employers in San Francisco, that is, the cabinet manufacturers and the planing mill owners in San Francisco, for a period of a year, approximately. That agreement I referred to was entered into in 1935 and was the first collective bargaining agreement entered into with a group of employers since the establishment of the open shop in 1921, four-

(Testimony of David H. Ryan.)

teen years. During the intervening time, from the time that was established in San Francisco between the cabinet manufacturers and planing mill owners, the union was trying constantly to persuade planing mill owners and a few cabinet shop proprietors and manufacturers to sign a similar agreement and establish that condition generally in the district. They had some success, but when we sat down in 1936 to get an increase in wages, then the argument started, so to speak. The employers accused the representatives of the unions of allowing their men, union millmen and cabinet makers, to go out and work for shops that had not signed the 1935 agreement for less than the scale and the men accused the employers, sitting in the conference, that their members diluted their union material that they were manufacturing in the plant with non-union material, in the manner similar as you have listened to here, take a door down there with a raised panel on it. You take the raised panel off it, the raised molding rather, or of a common single door as it comes as originally manufactured. They wanted them to take that apart and put the stamp on it and the men objected. I recall as my contribution to that discussion, I brought to the attention of the employers that the constitution and laws of the Brotherhood of Carpenters, and especially the obligation imposed upon an officer when he becomes installed, and I have been taking that obligation for over twenty years,

(Testimony of David H. Ryan.)

every year, to uphold the constitution, and it was very specific in stating the stamp could only be used on material that was manufactured a one hundred per cent union condition, and when the employers brought [665] the material in from the outside and used it in the fabrication of some material, it should have a stamp on it. It required our men to put a stamp on it that to all intents and purposes caused them to violate their obligation as members of the Brotherhood.

They pointed out some of the material was not available. They could not get in sufficient quantities and we insisted, at least I insisted, "Well if you want to go outside of the shops to get material, at least go out and get something that you would pay the same wages for if you made it here and get it made under union conditions, with a stamp on it."

This whole argument, I would not call it a conference, it was more like a fight than anything else, was based upon allegations of what had happened in the district, within the jurisdiction of the District Council, the fact being that in Alameda County, not parties to the agreement of 1935, there were a few that had gone along under union conditions and a lot had not. In those days, there were non-union shops in all four counties, but the planing mill owners and cabinet manufacturers in San Francisco were, the big bulk of them were on this side of the Bay, the big mills were a party to the

(Testimony of David H. Ryan.)

agreement. In Alameda County they were not. It was written up in this way, "In the interest of standardization of rates of wages and working conditions," they had a scale of 80 cents an hour here. Some mills signed up and paid eighty, some paid less and that was what the argument was about, didn't have a union scale, so in the interest of the standardization of rates of wages and working conditions, "it is agreed that no material will be purchased from; and no work will be done on any material or article that has had any operation performed on same"— That means the employers that purchased that material, we didn't purchase any—"by saw mills, mills or cabinet shops, or their distributors that do not conform to the rates of wages and working conditions of this agreement." [666] That was the agreement in 1936 as between the people who signed it, and then they put in the exempt list that is marked No. 16. The employers asked for the exempt list.

If any woman has ever gone to the butcher shop and bought a pot roast and had a skewer in it, that was a simple dowel. It is simply something run in circular cross section—just a pin, all sizes, from the size of a pencil up to three-quarters of an inch. It is to put in the round hole, put in the glue, stick the dowel in, and the dowel holds them together after the glue dries. I understand they make some dowels here. I sat in just as representing the District Council of Carpenters. I am a house car-

(Testimony of David H. Ryan.)

penter. I cannot testify with the personal knowledge that a millman can who works in a mill.

The third clause of that section was incorporated at the request of the employers. With reference to the succeeding sections to No. 16, "No millman or cabinet maker, a member of the Millmen's Union, shall work in any cabinet shop, planing mill or elsewhere in the City and County of San Francisco, or in the counties of Alameda, Contra Costa, Marin or San Mateo, in the capacity of a millman, cabinet maker or carpenter, unless the planing mill or cabinet shop in which he is working, be entitled to use the union label, etc." As it was testified, when they got into a conference they were accusing members of the Millmen's Union in this district of going out to non-union mills and working for less than 80 cents; working long hours and overtime, but after we finally got them to put in section 16 then they wanted to put a hitch on the millmen so they would have something, so we wrote up 17 to hold the employees down. That is my best recollection of what happened. In this matter they went a little better than the four counties covering the Bay District, they took in Contra Costa County. I don't know why, I didn't ask them.

I sat in on the 1938 negotiations. It is my [667] recollection the District Council of Carpenters served notice in the spring of 1938 of the desire to modify the present existing agreement. Conferences were held again and the millmen appointed

(Testimony of David H. Ryan.)

a negotiating committee, a conference committee, and asked me to sit in, and started all over again. The principal dispute at that time was wages. We could not get together on wages and some other minor matters, like the change in holidays; but the main dispute was wages and they couldn't agree and it was agreed to arbitrate again. They went to the joint committee set up between the Building Trades Employers Association and the Building Trades Council of San Francisco, those two organizations had an agreement covering the basic crafts, to the end that industrial disputes insofar as those crafts and employers were concerned would be settled by arbitration, or by both in conference. The cabinet manufacturers and planing mill owners in San Francisco were parties to it, San Francisco Employers Association and the Bay Counties District Council of Carpenters and Building Trades Council were parties, and they agreed to a conference committee and dropped this matter of an arbitrator into the lap of the joint committee. The employers' group in this joint committee suggested to the employers' group, Judge Walter Perry Johnson, and he was selected as the neutral arbitrator. I sat as one of the arbitrators representing the unions.

I recall the inclusion in the award of section 8 that became section 2 in the 1938 proposed agreement. When the agreement to arbitrate was reached, prior to the selection of the board, the San

(Testimony of David H. Ryan.)

Francisco planing mill owners and cabinet manufacturers signed an arbitration agreement. The planing mills and cabinet shops on the east side of the Bay, some in Contra Costa County, were represented in the conference by Messrs. Edwards, McConnell and Cox, sat in, neglected to sign an arbitration agreement. I asked the question after the arbitrator had been selected of [668] Mr. Edwards. I said, "Are you refusing to sign?" "No," he said, "my people have not yet authorized me," or words to that effect. In any event, they had not signed it. We went to arbitration and when it was decided in the Arbitration Award that the wage scale should be raised from \$8 to \$9, I said that award would have to be complied with; that there was a big group of planing mills and cabinet people in Alameda County represented by people in the conferences leading up to this matter who had not signed an arbitration agreement and had made a very bitter and stubborn fight in opposition to any increase, and now that the \$9 award was to be handed down, I might possibly be unduly suspicious, but I suspected they might not adopt it.

At any rate, I thought something should be put in this arbitration award before it was finally finished and handed down that might safeguard such a position. In any event, it was discussed and finally the arbitrator, Judge Walter Perry Johnson, was probably tired of listening to us, said,

(Testimony of David H. Ryan.)

"You gentlemen better see if you can decide what it is you want, try it out and hand it back and submit it to me."

We left, and this is what we finally agreed on, in this wording, and it is a provision that the \$9 agreement should include a provision to the effect it doesn't say "shall," it says "should" include a provision:

"It is deemed to be for the best interests of the community, in aid of the maintenance of fair working conditions, that the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is or shall be, working contrary to the conditions of said agreement."

"That meant, as I interpreted the agreement, that it is binding on the planing mill owners and the cabinet manufacturers who signed the agreement, if and when they signed it. [669]

"In any event, the award was handed down with that clause in it, and then the trouble started."

Mr. Edwards, president of the planing mills and cabinet people in Alameda County, definitely stated they wouldn't pay it. He asked for a meeting of the Conference Committee. I don't remember who asked for it, but anyway we landed in the executive board of the conference committee of the Associated General Contractors and discussed it and I wanted the agreement lived up to on both sides of the Bay. The old argument, you couldn't have two

(Testimony of David H. Ryan.)

scales, one for Oakland and one here. There had always been two scales ever since I have been in San Francisco, and the agreement was being modified by the 1936 contract, to cover four counties.

Mr. Edwards did not think it desirable. The president, Mr. Hilp, of Associated General Contractors said, their board had held a meeting prior to coming in and decided they would not interfere. They thought it should be lived up to on both sides; they thought the wage scale set by the board was too high. However, everybody decided to go to arbitration. Their own people suggested the arbitrator, and the best thing to do is live up to it. That was one meeting. It would affect the general contractors naturally. If cabinet workers, mill owners get \$8 a day in Oakland and \$9 in San Francisco, you would not have to be a prophet to know where an employer would go for his millmen. He would go to Oakland for them, if he got that differential.

We had a meeting with the San Francisco Building Trades Employers Association, that joint committee again, and in that committee present were John Cahill and Harry Hilp of the contractors—I think Mr. McNally was secretary of that committee. Mr. Ricketts and Mr. Mead of the Building Trades Council, myself, Messrs. Ennes, Hart and Anderson, that I recall. Mr. Bernhardt of the home builders, I can't recall it now, but the representatives [670] meetings. I am referring to the Negotiating Committee—the union officials. At that time, I went to

(Testimony of David H. Ryan.)

the hospital and stayed for fifteen days and I could not testify as to what happened then, but when I came out they had reached an agreement and had voted to the effect they would take a reduction in the four counties of the East Bay District from that award, or from \$9 to \$8.50, and it would be \$8.50 in Santa Clara and Contra Costa Counties. There were many meetings held after the agreement was arrived at. The unions in the East Bay District voted to accept \$8.50 instead of \$9. The situation was in a turmoil. As an illustration, millmen and cabinet makers in San Francisco had three or four different wage scales. They were working for \$8 under the old scale up until around July, then they started to pay the new scale of \$9. They paid \$8 and gave a check for \$1 and turned it over to the man who handed it back, and that \$1 raise went into escrow until this thing was settled. They then went from \$9 back to \$8.50 and there were three scales in about three or four counties, and a lot of money had to be paid back to this fellow and that fellow. Also the Pacific Manufacturing Company, at Santa Clara, and Redwood Manufacturing Company, at Pittsburg, agreed to bring their scale up to \$8.50, basic. They had a sub-scale, a sub-standard scale in those two plants that included a lot of work that in San Francisco they were paying \$8.50.

I am not familiar with all of the meetings and the negotiations and the change in pay. It was just an

(Testimony of David H. Ryan.)

adjustment of a very complicated situation. Pacific Manufacturing Company had a label since May 1936 and Redwood Manufacturing Company signed the agreement, I think, in 1937. Redwood Manufacturing Company were bringing millwork by truck into Alameda County to some extent, and the Pacific Manufacturing Company, while all of this was going on, was still operating under the \$8 scale, and having that lower scale, and the Golden Gate Exposition being [671] in the market for a lot of cabinet work, etc., they went over there and grabbed a lot of contracts under the lower scale. That was just another dispute added to what they all had. I don't know what bearing it has upon this matter. Pacific Manufacturing Company have the label—they had it since 1936.

I have been advocating the use of the locally-made material ever since I have been an officer of the organization,—over twenty years. My meeting with Mr. Williams was the result of a meeting I had with Mr. Roos, of Roos Bros. I had a conversation with Mr. Roos beforehand. I learned, of course, it was evident to everyone, that he was doing quite a bit of remodeling and alteration job, and Brother Edwards knew he was going to put that work in there. A business agent had reported that they understood there was some work going to go in there from Grand Rapids fixtures, of Portland.

I asked for a conference with Mr. Roos and was

(Testimony of David H. Ryan.)

granted one, and went to his office. I can't recall the time or the date. I had never met him in my life and he wanted to know what was on my mind and I told him, and he let me talk and didn't interrupt me. I told him quite a lot. I told the Colonel—he was a Colonel in the army—that while I was a soldier his name was a household word. I felt I knew him by his reputation, that he had been for years interested in the welfare of San Francisco, was a civic leader, a prominent merchant, and I understood he was contemplating asking for bids for work from Portland, from the Grand Rapids Fixture Company, and I told him I felt he should get his work manufactured in the City and County of San Francisco, and I pointed out to him we had hundreds of men walking the streets, and that they were supported by charity. Those were the facts at that time. They were walking the streets. We had men in our organization that were; that the City and County of San Francisco taxpayers and property owners were being assessed for relief money, [672] bond issues, men were on charity, they needed the opportunity to work, and I got wound up and I said, being a prominent man, a civic leader, a policy ought to be observed in the matter of spending the money in the City and County of San Francisco and taking the men off the streets and putting them to work, and I got rather warmed up and was afraid he would throw me out of the place, so I quit, and he did not say anything for a

(Testimony of David H. Ryan.)

while, and he finally kind of smiled, and asked me if I would like to have a drink, and I had a drink, and he then told me, "Just what is your objection to fixtures manufactured by the Grand Rapids Fixture Company, in Portland?" And I said, "I have no objection to them," I said, "they are made under union shop conditions, and they have a label, and they are made at a lesser wage scale perhaps, but why go to Portland?" I had objection to the men who intended to install them, but I didn't talk to Mr. Roos about that.

Finally, he said that Mr. Williams was the architect and I would see Mr. Williams, and that is how I came to see Mr. Williams. I met Mr. Williams. I forgot whether there was somebody else there—I think Mr. Harry Smith, the manager of the local business of the Grand Rapids Fixture Company. I pointed out to Mr. Williams that Walter Jacoby was there doing some work, and he said he was going to install Grand Rapids Fixtures, and we did not like Walter Jacoby, who had a habit of getting laborers and give them a pair of overalls and some tools and get him on the job and do the work of a carpenter.

"Mr. Clark: I object to that.

"Mr. Routzohn: I think that is very important.

"The Court: I don't think it is.

"Mr. Routzohn: I suppose I should show, if your Honor please, that Mr. Jacoby had not been employing union labor.

(Testimony of David H. Ryan.)

"The Court: It is unimportant whether he did or not. [673] I do not see that it has anything to do with the issues here, at all.

"Mr. Routzohn: I would like to make that proffer, that Mr. Jacoby was not——

"The Court: If you wish to ask the question you can.

"Mr. Routzohn: Q. Was it your objection that Mr. Jacoby, who was there for the Walter Manufacturing Company, did not comply with the labor conditions that were set forth in your contract?

"Mr. Clark: I object to that on the ground it is immaterial, irrelevant, and incompetent, and also leading.

"The Court: Sustained.

"Mr. Routzohn: Q. Tell us what you said relative to Mr. Jacoby?

"A. I told Mr. Williams that there were non-union men working in the basement of Roos Bros.—

"Mr. Clark: We move to strike that out as irrelevant.

"The Court: It seems to me it is immaterial here. I think you are going very far afield. It may go out."

I asked Mr. Williams if he had let the contract with the Grand Rapids Fixture Company, and my recollection is that he said he had or contemplated doing so, and he said; "Is there anything the matter with Grand Rapids fixtures?" And I said "As far as fixtures are concerned, no, but do you propose to

(Testimony of David H. Ryan.)

install them with union men upon the conditions under which we are operating here," and he said, "Yes," and I said, "The men on the job now are not union." I tried to induce Mr. Williams to install the fixtures under the established conditions here, or union conditions, and Mr. Williams said, "Sure, I will have union carpenters." I could not answer definitely who was installing the Grand Rapids fixtures, except that the business agent reported that Walter Jacoby said, "I am going to install them." When he went around to see who he had, he had non-union [674] men. Mr. Jacoby was non-union. Personally, he is a fine fellow, but outside of that, not. It was not a personal dislike I was describing.

I said, "Who are you going to let the rest of this to?" And Mr. Williams said, "If you will agree to install the Grand Rapids fixtures, I will agree to let all of the rest of them to local people," and I said, "All right." He said, "Will you try to help me get something like that?" And I said, "Sure." And something was drawn up. I had forgotten about it until I heard it read here the other day. In relation to the agreement it is simply this, I cannot recall it, I think that was just the way it was drawn up, but I agreed to install the fixtures, and as a matter of fact, under the laws of the Brotherhood we would have had to install them anyway, and Mr. Williams agreed that he would let all the rest of it in San Francisco, and I said, "I

(Testimony of David H. Ryan.)

will sign the agreement." I signed the agreement. One was trying to outsmart the other—that is all there was to it. I want to state that at no time, to Mr. Al Williams or Mr. McCreedy or Mr. Smith, did I ever say we would not install the union-made fixtures with the label of the Brotherhood on them—at no time.

I am the secretary of the District Council and outside of the District Council there is a business agent employed from various unions and there are a great number of them elected by their own unions and operating presumably according to the by-laws under the direction of the secretary of the council, but as secretary of the council I never refused to install union-made material, with a label, regardless of where it was made, or under what conditions, as far as wages are concerned. Nor has the District Council of Carpenters ever taken any official action on that. I cannot of my own personal knowledge testify as to what some business representative may have said or done without authority either of the Council or myself. I do not know of any [675] work where installation was refused on any union labeled-goods. That covers the entire period of the indictment, from 1936 and goes back further than 1936.

I remember meeting Mr. McCreedy. I cannot recall the conversation, except it was along the same lines, why couldn't they get the Grand Rapids fixtures on the market in San Francisco—words to

(Testimony of David H. Ryan.)

that effect. I cannot at this time recall the conversation, but I talked with Mr. McCreedy twice and I explained as definitely as I could that it was not the fact that these fixtures were made in Portland, or the wage scale up there, although lower than here, that there was a law of the General Brotherhood that the fixtures would have to be installed, but I was going to do what I considered good policy to promote the installation in San Francisco with men in San Francisco. I went over the same old story—there were unemployed men, men on relief, and I think I said in that conversation words to the effect that after all, while I was a labor man, I was after all the salesman the same way he was; that the men whom I represented had nothing but labor to sell and I was trying to sell that labor at so much per hour and day, and I had to sell it in the market—I could only market it where they lived; that their labor had to be here, I thought it was a good thing for the benefit of San Francisco, and I had a long line I am not going to worry you with. Of course, he did not agree with me, but I believed that. I do not recall saying anything about the mayor and meetings in San Francisco, and a vote having been taken by the people in San Francisco promoting local-made goods. The Portland scale was lower.

“Q. Now, do you recall making that sort of a statement to Mr. McCreedy?

“A. I may have stated it but I do not recall it.

(Testimony of David H. Ryan.)

I would deny that I said it but I do not recall it.

“Q. Did you talk about a difference in the scale?

“A. We may have. Can I make it clear that the difference in scale in so [676] far as the law of the organization is concerned, it is binding, and in so far as union stamped millwork is concerned it would not affect the situation.

“Q. In what way do you mean it would not affect the situation?

“A. If it was a very low scale, I would have worked all the harder to get it up to the local, but if they got it down here, we would have to put it up.

“The Court: We will be in recess for five minutes. Kindly remember the admonition.

(After recess:)

“Mr. Routzohn: Q. Mr. Ryan, referring again to your conversation with Mr. McCreedy—this is at page 742, line 5—I wish to read you this testimony of Mr. McCreedy: ‘Mr. Burdell: Q. Now, from your independent recollection, Mr. McCreedy, do you recall any further details of this conversation that you had with Mr. Ryan?

A. Well, I do since reading that.’

—He having read a paper.

“At that time I asked Mr. Ryan if there was any understanding with the local manufacturers here regarding our work in here, regarding the arrangement we had, and he said that there was.

(Testimony of David H. Ryan.)

"Q. He said there was such an understanding?

"A. He said there was.

"Did you make any statement of that kind that you had any understanding with the local employers about keeping work out that might be brought in here by his company?

"A. I do not recall the conversation. I do not recall Mr. McCreedy asking me the question. If he did ask me the question, I would answer it No. I do not recall it."

The only understanding that I have with the local employers, which includes the Associated General Contractors, the Associated Home Builders, the contractors in San Mateo County and the contractors in Marin County, is there will be no stoppage [677] of work or no limitation upon any kind of material that they bring in here and land on the job—it will be erected. That is not an understanding, except that the agreement does not provide for any limitation. That is the signed agreement. We have written agreements with the various groups mentioned. We do not have any verbal understanding with employer groups of any kind to the effect they will not be handled. We have no secret or verbal understanding with any employer group. We have trouble enough to make them live up to the written without taking their word for it.

I recall Mr. Smith testifying:

"Mr. Ryan said that after considerable further discussion that an understanding was entered into

(Testimony of David H. Ryan.)

or an agreement was entered into, I forgot just the word he said, whether it was an understanding or an agreement, whereby the local employers agreed to a wage scale which was satisfactory to the unions, provided the unions would protect them on outside competition.

"Is there such an agreement?"

"A. There is no such agreement. Might I explain?"

"The Court: Yes."

"So that it will clear, as an officer of the organization I have tried to persuade commercial houses and people who are in the market for sections of millwork to have it made here in this district under union conditions, for the purpose of securing employment for our men. And, of course, in doing this, it is to protect the local people because we are favoring local people in asking them to give it to local people. There is no agreement. We were doing that for years before I ever heard of the Cabinet Manufacturers Institute.

"Mr. Routzohn: Q. How long have you been doing that?"

"Mr. Clark: I object to that as immaterial, irrelevant and incompetent, how long he has been doing it.

"The Court: Sustained." [678]

We were doing it during the time of the indictment. We were not doing that as the result of an agreement or an understanding or a promise or a

(Testimony of David H. Ryan.)

meeting with employer groups in this community.

"Q. Reading farther from the testimony of Mr. Smith:

"Mr. McCreedy then brought up the question, 'Well, Mr. Ryan, don't you realize that that is against the law, it is a restraint of trade?' And Mr. Ryan said, 'Yes, we realize that fact, but, nevertheless, we are going to proceed along these same lines until such time as the Government stops us.'

"Did you make any such statement?

"A. I have no recollection of making any such statement.

"Q. Did you make any statement of that kind?

"A. I have no recollection; I am satisfied that I never made such a statement.

"Q. Did you make this statement:

"Q. What else was said?

"A. Well, the conversation carried on, and finally Mr. McCreedy said to Mr. Ryan, 'Well, I will be willing to enter into an agreement with you fellows whereby our company will agree on any equipment sold and shipped into the Bay area, we will agree to manufacture it under the same prevailing wage as exists in San Francisco at the time the equipment is shipped.'

"Do you recall that, Mr. Ryan?

"A. I do not.

"Q. Do you say that Mr. McCreedy did not make that statement to you?

"A. Well, I will not say; he may have made that statement, but I do not recall it.

(Testimony of David H. Ryan.)

"Q. Then Mr. Smith testified to the following question:

"Q. What did Mr. Ryan say?

"A. Mr. Ryan said, 'No, I could not consider that,' or 'We could not consider it.' He said, 'In the first place, we would never be able to convince the manufacturers here in San Francisco that such an agreement actually existed.' [679]

"Did you make that statement?

"A. I have no recollection of discussing that proposition.

"Mr. Routzohn: Q. Did you talk about the necessity of convincing manufacturers that you were keeping an agreement with them?

"A. I don't recall very much of what we talked about. I probably talked about making it in San Francisco. I probably did do that. I cannot recall, honestly.

"Q. Well, were you making those statements and representations to Mr. McCreedy that you did make that day in order to convince the manufacturers that you were carrying out some private agreement with them?

"A. Well, I didn't make the statement; you are asking me a hypothetical question, if I did make it and what my purpose was?

"Q. No, I am not asking a hypothetical question. It wouldn't be classified as that.

"The Court: Read the question.

"(Question read.)

(Testimony of David H. Ryan.)

"A. I did not make any such statement and representations.

"Mr. Routzohn: Q. Do you recall a Mr. Hosken who testified here and who was sales manager for the Grand Rapids Fixture Company?

"A. I recall him testifying.

"Q. Do you recall his testifying to a conversation had in Mr. Williams' office with Mr. Williams and Mr. Smith?

"A. I recall him testifying about it. I don't recall of meeting Mr. Hosken. I am not denying but what I might, but I don't recall it.

"Q. Reading from his testimony, at page 793, the question was asked by Mr. Burdell—it may be the following page:

"Q. Is that all that you recall?

"A. No. I mentioned to Mr. Ryan that I had a job, that I had a job, that I was figuring upon, I was going to figure on with Weinstein and I mentioned that job to him, whether I should spend any more time in trying [680] to get that job, I would not do it if I was going to be handicapped.

"Q. He told you the situation was just the same, is that right?

"A. Yes, they would not allow the men to install any of our equipment that had a lower wage scale than that which was prevailing in San Francisco.

"Do you remember making any statement of that kind?

"A. What year?

(Testimony of David H. Ryan.)

"Q. To Mr. Williams. That was your conversation with Mr. Williams. It doesn't state the year. It was at the time that you saw Mr. Williams.

"A. My answer is, I don't even recall the Weinstein job.

"Q. Sir?

"A. I don't recall the Weinstein job.

"Q. You don't even recall the Weinstein job. If Weinstein was mentioned, is that what you mean, you don't recall the name of Weinstein being mentioned; is that what you mean?

"A. No, I don't recall the Weinstein job. I suppose it is the Weinstein Department Store.

"Q. I don't know, myself.

"A. That is only a supposition on my part; I don't recall it.

"Q. Mr. Bernhardt at page 531, Mr. Zirpoli interrogated Mr. Bernhardt, Mr. Zirpoli asked this question:

"Q. You have already stated Mr. Ryan was present. Tell us what was said by this man.

"A. A statement was made at the end of the negotiations that we had overcome all our difficulties up to now and while it was not specifically put in the agreement that it would be understood that we would have no further trouble with, or no trouble with any of the stuff from the North.

"Q. That was the statement, was it?

"A. That was the substance of the statement. I don't know whether that was the words, exactly. [681]

(Testimony of David H. Ryan.)

"Now, do you recall the instance referred to by Mr. Bernhardt as to when you were present?

"A. Does that not refer to a meeting for the adjustment and settlement of this dispute about the wage scale in 1938 around July or August?

"Q. Yes.

"A. I don't recall that statement or making that statement, but I would like to make this statement: that prior to 1938 the District Council of Carpenters had a signed agreement with the Associated Home Builders, of which at that time Mr. Bernhardt was the president, and Mr. Bernhardt can't come on this witness stand and testify that any of his members—

"Mr. Clark: We would like the witness to answer the question. We move to strike it out.

"The Court: Let the answer go out and reframe the question.

"Mr. Routzohn: Q. Do you recall an instance with relation to a conference had with Mr. Bernhardt and members of the Associated Home Builders in 1938 after this award came through; Mr. Bernhardt was testifying—

"The Court: Do you remember any such conference, Mr. Ryan?

"The Witness: Your Honor, if it refers to a meeting that I had with the Associated Home Builders as to Associated Home Builders, I don't recall it.

(Testimony of David H. Ryan.)

"Mr. Routzohn: Q. There were other associations represented; I think you testified to that in chief, that you did attend a meeting with the Associated Home Builders and the Contractors' representatives, representatives of the Associated General Contractors and representatives from the East Bay Building Council, Marin County, and so forth, the Associated Home Builders, all of them met, I believe you mentioned that a while ago.

"A. Let me clear it up. I testified from the stand before the recess of a meeting called for the purpose of settling this dispute about the wage scale, the [682] same meeting that you will recall that Mr. McNally testified to as the secretary of that committee at which Mr. Bernhardt was present, and at that time the president of the Associated Home Builders, and Mr. John Cahill, Mr. Harry Hilp were present, Dewey Mead of the painters, James Ricketts, business agent of the Building Trades Council, the representatives of the Associated Home Builders, cabinet manufacturers, and I was present.

"Q. At that time you were discussing the 1938 award?

"A. We were discussing how we were going to get that wage scale settled and established.

"Q. That was immediately after the award was made?

"A. Yes.

"Q. Did you or did you not in that conversation, or in a conversation, at that conference there, make

(Testimony of David H. Ryan.)

the statement that Mr. Bernhardt attributes to you, that this agreement would end, that there would be no further trouble with, or no trouble with anyone on stuff from the North?

"A. I don't recall making that statement.

"Q. Well, did this agreement that had just been entered into and the award that had just been made have anything to do with the North, or did it have to do with local conditions?

"A. It didn't have anything to do with the North. I don't recall material from the North being mentioned at that time. It had to do with how we were going to get \$9 established, that is what we were talking about.

"Q. Do you remember Mr. Yates testifying, Mr. Ryan?

"A. I do.

"Q. About you having talked to him, or he talked to you in the presence of Al Edwards, a business agent?

"A. Yes, I do.

"Q. Page 485, or shortly after that, Mr. Yates was relating that you and Mr. Edwards were talking to him about entering into a contract with you, and at that time he testified that he had some lumber coming in from the North. The question was asked by Mr. Zirpoli, [683] "Did you have any lumber coming down from the North at that time?

"A. Yes.

"Q. What lumber did you have?

(Testimony of David H. Ryan.)

"A. Principally interior trim, doors, jambs, material like that.

"Q. How much did you have coming down from the North on order?

"A. Well, we had been bringing that material in ever since the first part of 1936.

"Then Mr. Zirpoli, four or five questions later, asked the question:

"What was said about that?

"A. They were demanding that we have stamped goods, the union agents here in the City, and if we were going to sign with them, enter into an agreement for a closed shop and stamping the goods we sent out of our place we wanted to know where we were going to get off on the present stock we had then that didn't have the stamp on it.

"Q. What did they say that they would do in that regard?

"A. That would be all right, they agreed to stamp the goods that we had in the house, so we could then dispose of it on union jobs, and they also agreed to let the other three cars come in that we had bought.

"Q. Did you have the goods in your shop stamped? A. Yes.

"You remember that, do you?

"A. You are asking me?

"Q. Yes. A. Yes, I recall it.

"Q. Well, did you at any time tell Mr. Yates you would object to his bringing this in from the

(Testimony of David H. Ryan.)

North as such, or were you objecting to his having unstamped lumber?

"A. Well, this meeting was held between Mr. Edwards, business agent of 42, and myself, Mr. Buckley and Mr. Yates. It is my recollection that Mr.——

"Mr. Clark: Your Honor, we object to that. He asked him a simple question and he wants to go off in a dissertation that I cannot object to because I cannot anticipate what he [684] is going to say. If counsel would just ask him one question——

"The Court: I think Mr. Ryan should answer the question directly, and after he has answered it, if he wishes to make a further explanation of it, he may.

"Read the question."

(Question read.)

"A. I cannot answer definitely I knew of that, but I do know that we tried and were successful in inducing the Buckley Door Company to agree to handle union-made doors and materials. I want to make it clear, if I may be in order, that testimony says that we demanded something of him. Never in my life, in the years I have been a representative of labor, did I ever demand anything of an employer. Never did I tell him what he had to do. I told him how far we would go in cooperating with him. I have never used that language."

"This situation developed out there: A number of doors came out on a construction job and they

(Testimony of David H. Ryan.)

didn't have the label, and somebody would handle it and they bounced back to the warehouse, and they wanted a meeting. The business agent told me about it. Mr. Edwards and I went out to Mr. Buckley's office and held a meeting with him and Mr. Yates and we discussed the situation, and they said they thought they were able to get union-made doors and were willing to handle them and try them out, but what were they going to do with what they had, and we went out to the warehouse and he had a warehouse full of doors and sashes that were non-union. We said we would put some sort of a stamp on them, not the union stamp, but something to indicate that when they went out on the jobs they would be used, and if he desired to enter into an agreement to handle union millwork, we would cooperate with him. He made the statement he was contemplating buying a mill, and he did get a mill from San Carlos, to mill his stuff without having to buy it. We got a stamp [685] that said, "This material is exempt. Bay Counties District Council of Carpenters," words to that effect. The business agent hired a man and stamped it, but after we had agreed to take care of all that, they referred to two or three carloads, one or two carloads at first that he had bought that hadn't come in.

We said, "All right, when these carloads come in, let us know." When that carload came in the Business Agent refused to put the stamp—somebody said he got in two or three more cars. A dis-

(Testimony of David H. Ryan.)

pute arose over—they just continued to bring in more than we agreed to, I believe.

In placing an exempt stamp on material to reach union agreements to have him handle union-made goods, it served two purposes—the goods went out on the job with the stamp would allow their use, and, No. 2, in stamping it in the warehouse, when that stuff was out, the rest of it would not have any kind of stamp on it. We wanted something so that we would know if they were going to continue to perform their agreement.

Nine out of every ten disputes, I would estimate, are adjusted on the job between the business agent and the employers. They are hired for that purpose.

I want to explain why it is not strange I don't recall the Weinstein job. There might have been a Weinstein job and it might have had a dispute, but unless it landed in my office, I wouldn't even recall it. [686]

I recall testimony of Mr. Christenson, about an anonymous telephone call relating to the Penney Store job, to the effect that the work would not be installed if the materials were not purchased in this community. I did not put in a call like that to Mr. Christenson. I don't recall putting in any call to anyone relating to the Penney Job. I absolutely did not put in the call that Mr. Christenson testified to. I do not know of anyone who did put in that call to Mr. Christenson.

(Testimony of David H. Ryan.)

I know of the Penney job. My recollection is it was handled by the business agent of San Mateo County, it was in his district. I do not know whether he made any effort to stop the Penney job.

I recall Mr. Hilp testified about the stoppage of lumber at Treasure Island, and the substance of the conversation I had with Mr. Hilp. He called and reported someone had ordered the lumber handlers or the laborers to stop handling, I think it was inch and a half T & G flooring, and I said something to the effect that I would look into it.

The District Council of Carpenters from the time the Exposition started until it was completed kept a paid representative there with an office. His name was Charles Eisen, and all carpenters employed had to clear through there. The agreement provided for that, and he was there to adjust disputes.

I got Mr. Eisen on the telephone and related this to him and it took some time. At that time the Exposition Company wouldn't let our officials have an automobile and he had to walk over the Island and around over the job. I told Eisen to find out and release it if somebody had been interfering with it. He came back and reported to me later in the day. I don't recall, but he said someone had given the order.

There were lumber handlers working over there

(Testimony of David H. Ryan.)

who were members of Local Union 2559. I heard testimony of someone [687] to the effect they were members of the hod carriers. Those lumber handlers were members of the Brotherhood of Carpenters, a semi-beneficial union in San Francisco. Some material was handled by the Laborer's Union in San Francisco, but my recollection is Eisen said someone over there told him it was hot cargo, or something like that. I instructed Mr. Eisen to release the material, that we had an agreement with Mr. Hilp. I don't know whether they got to work the next day or not, but it was released. That is all my knowledge of it.

Defendants' Exhibit T for identification is an agreement dated July 8, 1937, between San Francisco Building Trades Council and San Francisco Labor Council relating to the building and operation of Golden Gate International Exposition, signed by John Shelley and John O'Connell, president and secretary of San Francisco Labor Council, Watchman and Brown, president and secretary of Building Trades Council, and by Golden Gate International Exposition, by William T. Day, director of works.

"Mr. Routzohn: I wish to introduce this at this time, if your Honor please, and read it to the jury.

"Mr. Clark: We object, your Honor. It is immaterial. The charge here is not that the International Exposition entered into any combination.

(Testimony of David H. Ryan.)

but that the defendants entered into a combination.

"The Court: Let me see it.

"Mr. Clark: To keep from purchasing or selling or installing material in this area. We don't charge the International Exposition with any wrongdoing.

"Mr. Routzohn: We wish to show that the International Exposition entered into the same sort of a contract that we have introduced here in evidence, that there was an agreement to use local-made material.

"Mr. Clark: It is entirely immaterial, your Honor, what [688] the International Exposition did.

"The Court: The objection is sustained.

"Mr. Routzohn: May we proffer it then, your Honor please?

"The Court: Yes.

"Mr. Routzohn: In evidence.

"The Court: You are offering that?

"Mr. Routzohn: We are offering it in evidence so it will be taken care of.

"The Court: Is there an objection to it?

"Mr. Clark: Yes, we object to it on the same grounds, immaterial, your Honor.

"The Court: Objection sustained.

"(The document was marked "Defendants' Exhibit T for identification.")

(Testimony of David H. Ryan.)

"Mr. Routzohn: Q. Did you have a contract with the Exposition, Mr. Ryan?

"Mr. Clark: I object to that, your Honor, as immaterial whether he had a contract with the Exposition or not.

"Mr. Routzohn: I have not finished my question.

"Mr. Clark: Pardon me, sir.

"Mr. Routzohn: —in which it was agreed by the Exposition and the officials in charge of it that they would use in the Exposition only such materials as bore the union label and also would only use union labor?"

"Mr. Clark: I object to that, your Honor, as immaterial.

"The Court: Sustained.

"Mr. Routzohn: Q. And that the material that was to be used was to be local material, worked upon in this community?

"Mr. Clark: We object to that as immaterial.

"The Court: Sustained."

I recall the so-called Junior College job in 1939. Government's Exhibit 13, sub-number 1, for identification, is a [689] photostatic copy of a letter from Bay Counties District Council of Carpenters of March 20, 1939, addressed to David L. Barry, Clerk of the Board of Supervisors of the City and County of San Francisco.

The document was thereupon introduced in evi-

(Testimony of David H. Ryan)
dence as Defendants' Exhibit U, and was read to the jury as follows:

"This is on the heading of the Bay Counties District Council of Carpenters, etc., dated March 20, 1939.

"Mr. David L. Barry, Clerk,
Board of Supervisors,
City and County of San Francisco,
City Hall,
San Francisco, California.

"Dear Sir:

"The Bay Counties District Council of Carpenters desires to hereby register its vigorous protests against the awarding of a contract for cabinet work and millwork on the San Francisco Junior College to any firm outside of the City and County of San Francisco. We understand that the low bid for millwork and cabinet work on the above project is about \$190,000, submitted by a firm in Washington and that there is only approximately \$2,600 between that bid and the bid of a local manufacturer.

"We do not think it is necessary for us to present argument to you to show what the giving of that work to an outside firm would mean to our community in the loss of business and in the loss of payrolls. We have many unemployed millmen and cabinet makers in the mill industry.

"Every dollar that the City and County of San

(Testimony of David H. Ryan.)

San Francisco spends for fabricated wood work outside of San Francisco means the loss of about fifty cents in wages to a millman or cabinet maker living in San Francisco, who, in most cases, is a tax payer and who have wives and families to support.

"Just in proportion as unemployment is reduced in San Francisco just in that proportion are the expenditures for relief reduced and just in that same proportion are the property owners [690] and the tax payers relieved of the burden of maintaining the unemployed in our community.

"In this connection, we want to bring to your attention the fact that an amendment to the City Charter, giving a 10% preference to our local manufacturers, was approved by the voters, a long time ago. This amendment required the Board of Supervisors to adopt an Enabling Act, which your Honorable body has so far failed to do. We are unofficially informed that the Board requested City Attorney O'Toole to draw up the proper ordinance and then let it lay there. We do not know where the fault lies, if any fault there be. We are not criticizing your honorable board or the office of the City Attorney but we say to you that in our opinion we feel that immediate steps should be taken to rectify the present situation to the end that the City Charter, as approved by the voters, be made immediately effective or that some other steps be immediately taken to keep the payrolls

(Testimony of David H. Ryan.)
for municipal work in the City and County of San Francisco where they belong.

"With best wishes, we remain,

Sincerely yours,

BAY COUNTIES DISTRICT
COUNCIL OF CARPEN-
TERS.

D. H. RYAN,

Secretary.

ALEXANDER WATCHMAN,

President

San Francisco Building and
Construction Trades
Council.' "

Government's Exhibit 115-30 for identification is a letter dated August 11, 1939, addressed to Mayor Rossi, written by the Bay Counties District Council of Carpenters.

"Mr. Routzohn: Do you wish to see this, Gentlemen?

"The Court: I suppose it is along the same line, is it?

"Mr. Routzohn: On similar, but I think a little bit more comprehensive in its language, and I would like to read it into the record, if your Honor please. [691]

"The Court: If it is along the same line I cannot see any necessity for it.

(Testimony of David H. Ryan.)

"Mr. Routzohn: It is just a little bit more comprehensive in its scope.

"Mr. Clark: We would like to object again as immaterial. We are not objecting to Mr. Ryan's efforts on this job, what we are objecting to is the combination that he entered into to keep these people from bringing in material and its being installed. That is entirely immaterial to the Government's case.

"The Court: You can make the offer. I think you have gone far enough. Make the offer.

"Mr. Routzohn: My only purpose in all of this is to explain the gentleman's duties..

"The Court: He has explained that quite fully already.

"Mr. Routzohn: We wish to offer the letter, addressed by Mr. Ryan, Secretary of the Bay Counties District Council of Carpenters, dated August 11, 1939, which is marked for identification Government's Exhibit 115-30.

"Mr. Clark: We object to it as immaterial and self-serving.

"The Court: The objection is sustained.

(Testimony of David H. Ryan.)

**PLAINTIFF'S EXHIBIT NO. 115-30
FOR IDENTIFICATION**

(Copy)

**BAY DISTRICT COUNCIL
OF CARPENTERS**

San Francisco and Vicinity

A. L. McDonald, President

D. H. Ryan, Sec'y-Treas.

Office

**Building Trades Temple
Fourteenth and Guerrero Sts**

Telephone Market 1806

San Francisco, Calif.

August 11, 1939.

**The Honorable Angelo J. Rossi,
Mayor of the City of San Francisco,
City Hall,
San Francisco, California.**

Dear Sir:

In relation to the construction of municipal projects in the City and County of San Francisco with special reference to the undisputed desirability of allocating to local manufacturing plants and local labor, the largest possible amount of the work in connection with such projects, may the undersigned respectfully suggest steps that could be taken by the officials and awarding officers of the City and County of San Francisco, in the exercise of their

(Testimony of David H. Ryan.)

authority, that would retain for local plants and local labor, practically all of such work.

From the time a project is authorized and until the general contract for it is awarded and signed, there are three points we wish to refer to you:

1. At the time the architect is selected to draw up the plans and specifications, we suggest that it be impressed upon his mind that within reasonable limits, the cost of any item or classification of material, supplies, or equipment is not as important as is the question of whether or not it is bought and fabricated in the City and County of San Francisco.

We suggest that the millions of dollars in bond issues that the property owners and tax payers have met and still have to meet to relieve unemployment, makes it absolutely foolish to have equipment and fabricated materials manufactured outside of San Francisco in order to save a few dollars on the contract price, when such a practice keeps local plants idle, keeps local labor on the streets and adds \$10 to the burden of San Francisco in meeting unemployment expenses for every one dollar saved on the contract price.

2. We suggest also, that when the complete plans and specifications are before the awarding officers for approval that representatives of local firms and local labor be given an opportunity in the presence of the architect and awarding officers to learn in what particular part of the work the architect has specified some material or item of

(Testimony of David H. Ryan.)

equipment made outside of San Francisco "or its equal", and being informed what special advantage lies in such a stipulation that makes it paramount to local manufactured equipment.

3. We suggest in conclusion, that when the plans and specifications are ready for delivery to the prospective bidders that a time and place be set when they will be made available and that again in the presence of the awarding officers, representatives of local firms and local labor, the desirability of having all sub-contracts awarded to local firms be opened to discussion in an endeavor to reach an agreement with the prospective bidders to confine their sub-contracts to local firms.

Sincerely yours,

D. H. RYAN,

Secretary,

Bay Counties District Council of Carpenters.

[Endorsed]: Filed Aug. 14, 1942.

"Mr. Routzohn: Q. Mr. Ryan, in 1935 was there an amendment adopted to the City Charter to buy local made goods?

"Mr. Clark: We object to that as irrelevant and immaterial to any issue in this case.

"The Court: Sustained."

"Mr. Routzohn: I first wish to offer in that

(Testimony of David H. Ryan.)

connection a pamphlet entitled "Argument for Charter Amendment," and on page 5 of the pamphlet, entitled "Help Your City"——

"Mr. Clark: I object to your reading that.

"Mr. Routzohn: That is the only way I can identify it.

"Mr. Clark: He can identify it, and say he has offered Defendants' Exhibit For Identification. He might otherwise [692] as well introduce it in evidence.

"The Court: Have you finished with your offer?

"Mr. Routzohn: Yes, that portion.

"The Court: Is there an objection by the Government?

"Mr. Clark: Yes.

"The Court: What is the objection?

"Mr. Clark: Objected to as immaterial to any issue in this case.

"The Court: Sustained.

(The document was marked "Defendants' Exhibit V For Identification.")

DEFENDANTS' EXHIBIT V FOR IDENTIFICATION

HELP YOUR CITY

Vote "Yes" on Charter Amendment No. 6
Charter Amendment No. 6 provides for a preferential in behalf of San Francisco taxpayers doing

(Testimony of David H. Ryan.)

business with the City and County of San Francisco.

It will encourage home industry in the same way in which every other city and county in the State of California encourages home industry.

It will give the people of San Francisco—taxpayers, workingmen, workingwomen, manufacturers and contractors—the full benefit of the \$20,000,000 of P. W. A. bonds which were voted by the people of San Francisco to provide work and trade for the people of San Francisco.

Because of a flaw in the present charter, it has occurred that San Francisco labor and San Francisco manufacturers and San Francisco taxpayers are denied the benefits which were intended by the people of this community when they voted so overwhelmingly for the P. W. A. bonds.

Many of the benefits and much of the work and wages are going to people of other communities, some of which refused to follow the lead of San Francisco and cooperate in the Federal Public Works Program.

This amendment simply means that your money will be paid to you and your workers.

Helps San Francisco

This amendment would give a 10 per cent preferential to San Francisco bidders on P. W. A. and other City contracts.

This amendment is proposed jointly by business and labor organizations.

(Testimony of David H. Ryan.)

Here are some examples of why the business interests and the working people urgently recommend the adoption of this amendment.

The Glen Park School, costing approximately \$500,000, is now being built. All of the millwork is being done in a distant city because the local planing mills were a mere \$211 higher in their bid than were the outside planing mills.

Sometime ago a contract for \$32,000 worth of fire hydrants was let. The low bidder, whose plant is in Los Angeles, was \$411 less than the bid of a San Francisco firm.

Committees representing the San Francisco Chamber of Commerce, the San Francisco Labor Council and the San Francisco Junior Chamber of Commerce made every effort to retain this business, being paid for by the people of San Francisco, in this City. They finally had to give up because the present charter makes it illegal to give preference to home industries.

It was not very long ago when the City and County of San Francisco was buying soap made in China because the Chinese manufacturers of soap could underbid the San Francisco manufacturers of soap by a few dollars.

Other Cities

But what happens in other communities?

San Francisco manufacturers are stopped from bidding for public work in almost every city and

(Testimony of David H. Ryan.)

county in California; in fact, bids by San Francisco firms are often thrown out simply because these firms are outside the counties taking bids.

In the case of the school job, mentioned above, this is what actually happened:

The mills in the distant city are virtually guaranteed every bit of public work that goes on in that city. Having this guarantee, it is easy for them to underbid the San Francisco planing mills by \$211.

The fact is that San Francisco firms have given up bidding on public work to be done in communities less than ten miles distant from this city. The day when a San Francisco concern won a contract in Los Angeles is so far in the past that no one can remember when it was.

Here's the Picture

And so we have this picture:

The workingmen and the taxpayers and the manufacturers of San Francisco have voted to spend millions of dollars to stimulate local business and to give employment to local people.

But because of this provision in the city charter, the millions that they have voted and which they are going to pay must be spent to stimulate business and provide employment in other communities.

Let's Help Ourselves

Charter Amendment No. 6 remedies this unwholesome and unprofitable condition by giving

(Testimony of David H. Ryan.)

a 10 per cent preferential in behalf of the industries and manufacturing plants and workmen who live in San Francisco, who work in San Francisco and who pay taxes in San Francisco. (The preferential in a city not far distant in behalf of its local industries is 20 per cent.)

Vote "Yes" on Charter Amendment No. 6

And Help Business and Labor

Authorized by the Board of Supervisors.

[Endorsed]: Filed Aug. 14, 1942.

"The Court: Do you wish to offer some amendment to the Charter?

"Mr. Routzohn: Yes, the Charter Amendment No. 6, entitled "Preference For Local Labor And Industry." I think it has a material bearing on this case.

"The Court: Is there any objection?

"Mr. Clark: Yes, your Honor, immaterial.

"The Court: Sustained.

(The document was marked "Defendants' Exhibit W for Identification")

DEFENDANTS' EXHIBIT W FOR IDENTIFICATION

CHARTER AMENDMENT No. 6

Preference for Local Labor and Industry

Describing and setting forth a proposal to the qualified electors of the City and County of San

(Testimony of David H. Ryan.)

Francisco, State of California, to amend the Charter of the city and county by amending as herein set forth Section 98 thereof dealing with contractors' working conditions under contracts for public work or improvements, and providing for the allowance of a preference not to exceed ten per cent in favor of articles to be used on public works or improvements, which said articles are manufactured, fabricated or assembled within the City and County of San Francisco, as against similar articles manufactured, fabricated or assembled elsewhere.

The Board of Supervisors of the City and County of San Francisco hereby submits to the qualified electors of said city and county at the special election to be held on the 2d day of May, 1935, to amend the Charter of said city and county by amending Section 98 thereof dealing with contractors' working conditions under contracts for public works or improvements, and providing for the allowance of a preference not to exceed ten per cent (10%) in favor of articles to be used on public works and improvements, which said articles are manufactured, fabricated or assembled within the City and County of San Francisco as against similar articles manufactured, fabricated or assembled elsewhere.

Contractors' Working Conditions

Section 98. Every contract for any public work or improvement to be performed at the expense of

(Testimony of David H. Ryan.)

the city and county, or paid out of moneys deposited in the treasury, whether such work is to be done directly under contract awarded, or indirectly by or under sub-contract, sub-partnership, day labor, station work, piece work, or any other arrangement whatsoever, must provide: (1) That in the performance of the contract and all work thereunder, eight hours shall be the maximum hours of labor on any calendar day; (2) that any person performing labor thereunder shall be paid not less than the highest general prevailing rate of wages in private employment for similar work; (3) that any person performing labor in the execution of the contract shall be a citizen of the United States; (4) that all laborers employed in the execution of any contract within the limits of the city and county shall have been residents of the city and county for a period of one year immediately preceding the date of their engagements to perform labor thereunder; provided, however, that the officer empowered to award any such contract may, upon application of the contractor, waive such residence qualifications and issue a permit specifying the extent and terms of such waiver whenever the fact be established that the required number of laborers and mechanics possessing qualifications required by the work to be done cannot be engaged to perform labor thereunder.

The term "public work" or "improvement," as used in this section, shall include the fabrication,

(Testimony of David H. Ryan.)

manufacturing or assembling of materials in any shop, plant, manufacturing establishment or other place of employment, when the said materials are of unique or special design, or are made according to plans and specifications for the particular work or improvement and any arrangement made for the manufacturing, fabrication or assembling of such materials shall be deemed to be a contract or a sub-contract subject to the provisions of this section.

The board of supervisors shall have full power and authority to enact all necessary ordinances to carry out the terms of this section and may by ordinance provide that any contract for any public work or improvement, or for the purchase of materials which are to be manufactured, fabricated or assembled for any public work or improvement, a preference in price not to exceed ten per cent shall be allowed in favor of such materials as are to be manufactured, fabricated or assembled within the City and County of San Francisco as against similar materials which may be manufactured, fabricated or assembled outside thereof. When any such materials are to be fabricated, assembled or manufactured by any sub-contractor or materialman for the purpose of supplying the same to any contractor bidding on or performing any contract for any public work or improvement, said sub-contractor or materialman manufacturing, fabricating, assembling or furnishing said ma-

(Testimony of David H. Ryan.)

materials manufactured, assembled or fabricated within the City and County of San Francisco shall be entitled to the same preferential as would any original contractor or materialman furnishing the same if the board of supervisors shall by ordinance so provide. When any ordinance shall so provide any officer, board or commission letting any contract may in determining the lowest responsible bidder for the doing or performing of any public work or improvement add to said bid or sub-bid an amount sufficient not exceeding ten per cent in order to give preference to materials manufactured, fabricated or assembled within the City and County of San Francisco.

Ordered Submitted—Board of Supervisors, San Francisco, March 20, 1935.

Ayes: Supervisors Brown, Colman, Gallagher, Havenner, Hayden, McSheehy, Ratto, Roncovieri, Schmidt, Uhl.

Absent: Supervisor Shannon.

I hereby certify that the foregoing charter amendment was ordered submitted by the Board of Supervisors of the City and County of San Francisco.

J. S. DUNNIGAN,

Clerk.

“Mr. Routzohn: We are also offering it in evidence. I also wish to offer in evidence along the

(Testimony of David H. Ryan.)

same lines, your Honor, the charter of the City and County of San Francisco at pages 56 and 57.

“Mr. Clark: We object to that as immaterial, your Honor.

“The Court: Sustained.

(The document was marked “Defendants’ Exhibit X For Identification.”)

DEFENDANTS’ EXHIBIT X FOR IDENTIFICATION

Contractors’ Working Conditions

Section 98. Every contract for any public work or improvement to be performed at the expense of the city and county, or paid out of moneys deposited in the treasury, whether such work is to be done directly under contract awarded or indirectly by or under sub-contract, sub-partnership, day labor, station work, piece work, or any other arrangement whatsoever, must provide: (1) That in the performance of the contract and all work thereunder eight hours shall be the maximum hours of labor on any calendar day; (2) that any person performing labor thereunder shall be paid not less than the highest general prevailing rate of wages in private employment for similar work; (3) that any person performing labor in the execution of the contract shall be a citizen of the United States; (4) that all laborers employed in the execution of any contract within the limits of the city and county shall have

(Testimony of David H. Ryan.)

been residents of the city and county for a period of one year immediately preceding the date of their engagements to perform labor thereunder; provided, however, that the officer empowered to award any such contract may, upon application of the contractor, waive such residence qualifications and issue a permit specifying the extent and terms of such waiver whenever the fact be established that the required number of laborers and mechanics possessing qualifications required by the work to be done cannot be engaged to perform labor thereunder.

The term "public work" or "improvement," as used in this section, shall include the fabrication, manufacturing or assembling of materials in any shop, plant, manufacturing establishment or other place of employment, when the said materials are of unique or special design, or are made according to plans and specifications for the particular work or improvement and any arrangement made for the manufacturing, fabrication or assembling of such materials shall be deemed to be a contract or a sub-contract subject to the provisions of this section.

The board of supervisors shall have full power and authority to enact all necessary ordinances to carry out the terms of this section and may by ordinance provide that any contract for any public work or improvement, or for the purchase of materials which are to be manufactured, fabricated or assembled for any public work or im-

(Testimony of David H. Ryan.)

provement, a preference in price not to exceed ten per cent shall be allowed in favor of such materials as are to be manufactured, fabricated or assembled within the City and County of San Francisco as against similar materials which may be manufactured, fabricated or assembled outside thereof. When any such materials are to be fabricated, assembled or manufactured by any sub-contractor or materialman for the purpose of supplying the same to any contractor bidding on or performing any contract for any public work or improvement, said sub-contractor or materialman manufacturing, fabricating, assembling or furnishing said materials manufactured, assembled or fabricated within the City and County of San Francisco shall be entitled to the same preferential as would any original contractor or materialman furnishing the same if the board of supervisors by ordinance so provide. When any ordinance shall so provide any officer, board or commission letting any contract may in determining the lowest responsible bidder for the doing or performing of any public work or improvement add to said bid or sub-bid an amount sufficient not exceeding ten per cent in order to give preference to materials manufactured, fabricated or assembled within the City and County of San Francisco. Ratified by the Legislature, May 17, 1935.

“Mr. Routzohn: I would like to have a stipula-

(Testimony of David H. Ryan.)

tion that the proper foundation has been laid for offering these exhibits in evidence. [693]

"The Court: Yes.

"Mr. Routzohn: Can we have that stipulation so that there will be no question about what the offer is?

"Mr. Clark: We object to the materiality of it.

"The Court: There can be no question, I take it, that the proper foundation has been laid.

"Mr. Clark: We are not objecting to it for lack of foundation.

"Mr. Routzohn: You have no objection along that line, your objection is merely to the materiality of it?

"Mr. Clark: Materiality of it."

We also have contracts with the contractors and home builders in this community. All contracts with the general contractors and home builders are negotiated directly through the District Council of Carpenters. The District Council of Carpenters is composed of delegates from millmen as well as delegates from other unions.

Defendants' Exhibit Y for identification is a District Council of Carpenters original signed agreement between the Bay Counties District Council of Carpenters and the Associated General Contractors of San Francisco, effective May 1, 1940, up to May 1, 1945.

"Mr. Routzohn: If your Honor please, we wish to introduce this in evidence at this time.

"Mr. Clark: We object as being immaterial; it

(Testimony of David H. Ryan.)

is a contract between the Council and the General Contractors; the General Contractors are not a party to this case, and the contract has no bearing on the case, whatever.

“Mr. Routzohn: We wish to show in addition to that that it anticipated the action of Congress the other day by having compulsory arbitration and settlement of labor disputes entered into by these very men who are accused in this Court, and the [694] contract runs until 1945.

“The Court: Objection sustained.

“Mr. Faulkner: Might I say, if your Honor please, although this is offered in conjunction with his own group, the implication or the claim is made by the Government, I assume, in this case that some arrangement existed between the Carpenters and other defendants in this case that they would not install material. If that is their claim it would have to be pursuant to an understanding between the Carpenters and the Cabinet Men, among others. Now, then, what is that understanding, is it oral or written? It is certainly relevant in this case to prove that the only understanding between the Cabinet Men and the Carpenters is a written agreement. There is no such provision, otherwise there must be some evidence of an oral agreement. If Mr. Clark says that there is an oral agreement and he does not rely on any written agreement between the Carpenters who do the milling and the cabinet men, then it could not be material. If he states that, and if he relies on a written agree-

(Testimony of David H. Ryan.)

ment, these millmen contracts have nothing to do with installation. That is quite clearly demonstrated in this record; the installation of material is done solely by carpenters who are covered by a separate agreement and they have nothing to do with the millmen group. If Mr. Clark says there is a written agreement between the Carpenters not to instal in violation of the Sherman Act, then any written agreement would be admissible. If he says there is no written agreement that has to do with it and he relies solely on an oral agreement, I think the record should be clear at this time.

"The Court: I do not think it is material."

"Mr. Routzohn: Q. Now, Mr. Ryan, from 1935 on, 1936, 1937, 1938, 1939, 1940, and 1941 up to the present time, have you had a continuous labor dispute with the C. I. O. in your organization? [695]

"Mr. Clark: We object, first, as immaterial; second, as calling for the opinion and conclusion of the witness.

"The Court: The objection is sustained.

"Mr. Routzohn: I want to prove there has been a labor dispute here, not only with these men, but with a dual organization.

"The Court: The objection is sustained."

Defendants' Exhibit Z for identification is a bulletin issued by the California State Council of Carpenters, dated October, 1936.

My name is in the list of mills, etc.

(Testimony of David H. Ryan.)

"Your Honor, we object to this document as immaterial.

"Mr. Rontzohn: Do you wish to see it, your Honor?

"The Court: Hand it to the Clerk.

"Mr. Rontzohn: The list, particularly.

"The Court: All you have to do is read the first paragraph to see it is not material.

"Mr. Rontzohn: Well, we wish to offer it in evidence, your Honor.

"The Court: Objection sustained."

Defendant's Exhibit AA for identification is a rubber stamp of the United Brotherhood of Carpenters and Joiners of America, used for imprinting on millwork and wood, and so forth.

Thereupon the stamp was marked "Defendants' Exhibit AA."

Defendants' Exhibit BB for identification is a copy of Carpenters Weekly Bulletin, dated April 1, 1938; no signature; B.W.A. No. 34.

"Mr. Rontzohn: We wish to introduce that in evidence, if your Honor please.

"Mr. Clark: That is objected to as immaterial and self-serving.

"The Court: Sustained."

I have not at any time had any private understanding [696] or any agreement, verbal agreement, with any of the employers in this community, relating to the installation or the manufacture of mill

(Testimony of David H. Ryan.)

work and patterned lumber. I do not know of any such arrangement or understanding or agreement between any union men and any employer in this community.

Whether all of the agreements that we have made have been reduced to writing, would depend upon what you would call an agreement. I have not, and do not, worked on any agreement, verbal or otherwise, or an understanding with any employer whereby certain goods were to be denied admittance into San Francisco and its environs.

“Q. In all of the negotiations that you have had with employers, ranging from 1935 on up to the present time, I will ask you whether or not there has ever been in your mind an intent or purpose to restrain interstate commerce.

“Mr. Clark: We object to the intent and purpose of this witness as immaterial to any issue in the case.

“The Court: Sustained.”

Cross-Examination

By Mr. Clark:

I testified in regard to my obligation under the Constitution of the Brotherhood, and said I had been taking that obligation for some twenty years. That obligation was an obligation as an officer of the organization to uphold the constitution and laws. All members take an obligation.

My testimony was that when the men were required to place the stamp on non-union materials,

(Testimony of David H. Ryan.)

after doing a little inconsequential work upon it, that was to all intents and purposes calling on them to violate their obligation. For instance, the doors, where a little work was done and then the employer would put the stamp on it through the steward in the shop. [697]

We asked them to get the material at least that has a union stamp and where they pay the same wage, or get it made here and get it made under union conditions with a stamp on it.

When I testified, "At least go out and get it stamped," I meant to go around the corner to a shop, wherever it was, but there was no argument that I recall about where to go. The complaint at that time that the representatives of the unions lodged was that they were going across to Alameda County and to non-union shops in the district and getting material and making them work on it. The material they were getting was not union-made. The objection was the union shop was buying the material locally from other shops that had not signed an agreement and were still working open shop and not paying the scale.

They would buy it from some mill or some builders' supply in San Francisco where they could get it. They were non-union doors. Where the material originally came from would depend on the door. If it was hardwood or Philippine mahogany, it would come from the Orient; if it was Oak, the material would come from wherever they could get their Oak, mostly through the South. If it was

(Testimony of David H. Ryan.)

Oregon pine doors, it probably came from the North. The material came from all parts of the country, but they would buy it locally through a mill or broker. It is not that, they would place the order locally and then the material would be shipped in. You are assuming I know a lot about the business, but as a matter of fact I don't know so much about that.

When we told the employers to go out and get things at a union shop locally, they insisted on getting it wherever they could. They didn't want to be restrained or hampered, they just wanted to go out and buy it wherever they could. It is true that some of the material could not be bought from other shops here. We were not objecting to the employers going [698] out and buying material wherever they liked, but if he brought it into a shop and wanted to turn it out of the shop as a union-made product, we objected to placing the union label on it unless he bought it from union-made material, that was the only question as I recall it. The upshot of it was they had the exempt list. That has always been their idea, not ours.

That material set forth on the list did not bind them with the wording or stipulation contained in 16, right ahead of it, in which they agreed they wouldn't buy any material or do any work on it unless it had been made, and that was exempted, that they may buy that and let it come—exempted from any restraint in so far as the union was concerned.

(Testimony of David H. Ryan.)

The first paragraph in 16 of the 1936 contract said that no material will be bought or work done thereon. That meant the employers would not buy that material or require the men to work on it under those conditions of lower wage scale. That would cover any material they bought and proposed to have the men work on. We didn't care where it was manufactured as long as it had the union label on it and made under conditions similar. If they wanted us to work on it, and then call it a union product and put a stamp on it——

If it had the union label and was manufactured at a lower wage scale, than in San Francisco, that language in there says, "At the same wage scale." The argument around the conference board was that the employers said, "Well, we can't make this stuff in quantities; yes, we can make it, but we can't make enough of it," and if they were going out to buy something with a stamp on it, they should buy something at least made under the same wage scales. We didn't want them to go out and buy it; they could make it instead of going out and getting it cheaper. As a matter of fact, a lot of those things on the exempt list we felt they were able to make, but they bring [699] material in there and ask the men to work on it, material that was not only non-union, but made at lower wage scales, and we felt it was not because they couldn't make it, but they were going out and getting it a little cheaper.

"Q. What you wanted them to do was to make it locally?

(Testimony of David H. Ryan.)

"A. It didn't make any difference, we were trying to kill that argument of theirs that they had to go out and buy it. We were dealing with a local situation. We had just been organized for a year and we were all surrounded in Alameda County with non-union planing mills."

This paragraph, as far as we were concerned, was to require the employers to buy union materials at comparable wage rates that were paid here, except on those items that were on the exempt list, as to the material they required to fill out their orders that they said they required. That exempt material must be manufactured at a wage rate comparable to the local rate.

When they started to talk about an exempt list after we had written 16, about getting doors in quantities instead of making them here, the Oregon pine door, comes from California but some came from Oregon and the North. The molding and the door jambs is made in quantities in Oregon because they can manufacture it in such large quantities. Up to 1935 there had been no union shop agreements here in San Francisco since 1921; it was all open shop. The warehouses were chock-ful, and the lumber yards had all kinds of materials, because not only the Northwest, but the South, everywhere else, all open shops, non-union-made material, we had fourteen years of that without regulation.

In 1936 the employers did talk about the competition that was affecting them from outside mills that

(Testimony of David H. Ryan.)

were selling here. Those mills start from San Diego and go clear to Vancouver. They cover a lot of ground. [700]

I was constantly arguing for the manufacture of all of their stuff in San Francisco, yet we had to realize there was a certain limit to their so-called competitive area. They would say, "We can't manufacture millwork in San Francisco to compete with San Diego." I would argue, "You have no legitimate right to get a wage scale like that where you get a market, say in San Diego, and you pay transportation on it; they have a right to their market, and so with Los Angeles; you are trying too big a territory as your competitive territory; stay a little closer to home."

They didn't agree with it. They mentioned mills all the way from San Diego to Vancouver and Panama and the Deep South; they mentioned wage rates in North and South Carolina and all through there; ten cents an hour, something like that. I told them they took in too much territory. They always spoke of their competition; they manifested a lot of concern on that ground. We argued over the exempt list. So far as the millwork representatives there, I am a house carpenter and didn't know all the technical details of it. The millmen did most of the arguing, trying to keep that exempt list down as short as they could. They didn't want to exempt. They were interested in what they were buying. We wanted it made here. The mill operators said, "We want an exempt list."

(Testimony of David H. Ryan.)

I recall the testimony of a labor man, characterizing the exempt list as long as your arm, words to that effect. The mill operators wanted an exempt list in order that they might be able to bring in material they could buy more cheaply and they did bring it in.

The millmen were speaking of material, no material shall be brought in or worked on that has had any operation on it; rough lumber, for instance the frame of the building, joists, studdings and rafters are sawed out to size in the original saw [701] mill. Later on they are run through to size into joists, and a lot of those operations are performed up there to save freight rates. Up to 1920 it used to be work done here in San Francisco, came in rough and sized here. We had to get the rough lumber in here; that is self-evident.

The mill owners accused the Conference Committee that they were permitting their membership of the union to work for non-union mills at less than what they were paying. I can't recall, but I think they said they wouldn't work anywhere in shops or mills unless they agreed to pay this scale. They wouldn't work in any unless the same scale was paid in this district, they wouldn't go out and work for less money. It was a uniform scale throughout the area.

The basic purpose, if a group of mill owners agreed to pay a certain classification of labor so much wages, they wanted it understood they would

(Testimony of David H. Ryan.)

not go out and work for somebody not a party to the agreement for a dollar a day less.

By the first of January, 1937, I would just guess, probably a good part of the mills in San Francisco were unionized. That was 1935 that I testified very few of them were unionized. When we went in to negotiate that agreement in 1935, we never had any union shop agreement since 1921. Up to January 21, 1936, it would only be a guess, but the majority of them by that time were organized, I think. In 1938, practically all of them were organized. That would be the cabinet shops as well as the mills.

After the agreements are approved by the Local Unions they go before the council and they are then approved. The council don't approve the agreements unless the unions and the members have first approved them. Once they are approved by the council they become a part of the labor working conditions that the District Council undertakes to enforce [702] and to make generally recognized have the approval of the District Council as a Council; but the affiliated local unions elect their own business agents. The business agents under the law are supposed to work under the direction of the Council, but they are elected by the unions. They are supposed to work out of the office of the District Council. The business agents in the field do a lot of work. They settle nine out of every ten disputes that come up, very few of them land in the Coun-

(Testimony of David H. Ryan.)

cil. The law is that the business agents are supposed to work under my supervision and out of my office. The locals pay their salary.

Government's Exhibit No. 174 is a letter dated June 21, 1937, signed by me. It is addressed to planing mills and lumber dealers in Alameda County directly, and it says: "There is being brought into Alameda County doors, sash and trim that should be made in the San Francisco Bay District, in accordance with the terms of our existing agreement with the East Bay Planing Mill Owners and other firms in Alameda County." That refers to Section 16 of the 1936 contract.

The complaint was lodged, as I recall it, that after signing the agreement they were still bringing in non-union doors and stuff and running them through and putting them out as union-made products. Under the terms of the agreement referred to there they had to make them in San Francisco or, if it was on the exempt list, they could bring it in. There was other stuff there that should not be—they brought in special made doors for one thing. Special made doors refer to stock in there. They were bringing in special made doors that were not exempt. It was stock doors that were exempt.

They are manufactured for stock, and sometimes an architect gets an idea he wants a different form of mold or something like that and puts some special design on it and it then becomes a special door. Special doors were coming in and I [703] had some

(Testimony of David H. Ryan.)

complaint, that is one of the reasons I wrote out the letter. Complaints came into the office of the Council and I sent that out on my own knowledge. I couldn't say that that is so, but I get those reports from business agents. We sent them to the mills that we know, the business agents know where the mills are. He can give you a list of all the mills, whether they are in the telephone book or not. We try to get it to everybody. He would sort of broadcast it so everybody would know about it.

Exhibit 174 was addressed to lumber dealers and lumber yards that had agreements with us, they had some machinery in there and big saws. They were big yards like Loop Lumber Company. I can't recall who it was sent to, but we tried to cover everybody so as to find out about it, regardless of whether they had a planing mill or saw mil.

"Q. You wanted them to know about it?"

"A. And whether they had an agreement, or not."

In 1938 we had to place an Arbitrator on the wage scale. I believe the instruction to the Arbitrator was wages and hours. We were asking for shorter hours but were not expecting to get it. I believe Section 2 is Section 8 of the arbitration award. I think Section 8 and Section 2 dealt with the same matter and are identical.

Exhibit No. 132 is the agreement in effect after the award, and Section 17 is the exempt list under this agreement. Section 2 in the agreement, as it

(Testimony of David H. Ryan.)

was drawn up after the award, quotes almost verbatim Section 8 of the award.

I don't recall what was said in the negotiations right after the award, the only controversy at that time was about that \$9.00 scale, whether it was going to be paid or not.

The last part of Section 8 was practically Section 2 in the Agreement, "That the parties to the agreement adopt and abide by the business policy of refusing to handle any material coming from any mill or cabinet shop that is [704] or shall be working contrary to the conditions of said agreement"—as to that particular clause Mr. William Hutcheson came out here, and I met him, and he said, "What does that mean," words to that effect, and I tried to explain, and he said, "It says any material that comes from any mill. Are you proposing to keep out of here union-made millwork because it is not made at the same wage scale?" And I said, "No, that is not the intention." "Well," he says, "nobody is going to interpret it that way", just in those few words. That was up in the St. Francis Hotel. I said, "Everybody to the best of my recollection around here knows, the planing mill owners and cabinet manufacturers, that union-made stamped cabinet work and mill work will be installed if it reaches the job, it will be installed."

If it comes in here all fabricated, the only time we would see it would be on the job, we would never see it until it gets on the job. Our agreement

(Testimony of David H. Ryan.)

was to install it. There is not anything happens before it gets on the job under this agreement as far as we are concerned. If somebody brings union millwork in here, or union cabinet work, we won't see it if it is fabricated, it won't go to the cabinet shop, it will land out on the job.

Mr. Hutcheson asked what was meant and I told him, that don't mean to keep out union-made material. He said, in effect, "That is what they will say you are doing."

Section 17 in the same agreement is the same thing, it is the same language, that refers to material coming into saw mills. He objected to that. I don't know what he said about it, but he said anyway it was out. He was the boss and that settled it.

December 19, 1938, Paragraph 17 was changed by mutual agreement to read as follows: [705]

"In the interest of providing productive employment, it is agreed that no material will be purchased from; and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or employers of members of the United Brotherhood of Carpenters and Joiners of America."

*That is the wording of the October 18th amendment. That finally was wound up in some kind of agreement arrived at in October, I believe it was, I forget now. In October I was not on the

(Testimony of David H. Ryan.)

job. That language was signed to meet the General Office's objection to the language that was in the other agreement. Our definition of the General Office's definition of union condition in the fabrication of cabinet work and mill work is that they not only agree to employ members of our organization, but they have to have the wage scale that the General Office recognizes as a fair scale, and when they issue the stamp to them then they are manufactured under union conditions. If they have not got the stamp that is not a union condition. We have agreements, not here, but agreements are entered into with planing mills and cabinet shops in various places where they agree to employ none but members of our organization, but the wage scale in some instances is so low that the General Office won't grant them a stamp. The wage rate is one of the conditions of granting a stamp. The general policy of 75 cents per hour is the minimum although the General Office has authority to modify that up and down, in their judgment.

Those words, "Any material that has been made under conditions unfair to members of the United Brotherhood" would include the stamp and the wage both, that is as far as union-made goods. The next clause, "or employers of members of the United Brotherhood" I would assume is the Mill Owners, is what they meant. I did not participate in drawing that one up. I [706] was in the hospital. I have read that, but I would rather have somebody inter-

(Testimony of David H. Ryan.)

pret it who helped to draw it. I don't recall attending any meeting where they discussed this clause subsequent to the time I recovered from the illness. I attended a meeting before October 1, I believe. I recall November 12, 1938, attending a conference committee of Local 42, 262, 550 and 1956. My recollection is they discussed those matters. I think I attended a conference before the end of the year, at which mill operators or their agents were present. I cannot recall what was said regarding paragraph 17. I recall writing a letter to General President Hutcheson, proposing some new form after everybody said everything they had to say about it, but I can't recall the date or what was said there.

I went to Indianapolis in September, I got there one day and left the next, around the 13th, 14th or 15th of September. Mr. Hutcheson came out here after that. I remember when Mr. Hutcheson was in the St. Francis Hotel and Mr. Muir and Mr. Cambiano, and I think Messrs. Ennes and Gaetjen were there.

There were meetings after I came back in November or December, because I wrote a letter to Hutcheson sometime early in December, 1938, putting in all of the various items these meetings had arrived at and submitted it to him as a form of agreement. After they had signed this agreement to pay \$8.50 it seemed to be so vague, nobody could agree on what they had agreed to do, and

(Testimony of David H. ~~San~~.)

there were all kinds of discussions on it, and, finally it was drawn up in shape and I wrote a letter, but I had at least one meeting with the representatives of planing mills and cabinet shops; I know before the writing of the letter, and then I wrote the letter back to Hutcheson, and he finally approved it. This was around, I think, December, 1938. I wrote to him what they had agreed to and they had agreed to take \$8.50; there was so much brought about verbally nobody had the same [707] recollection of it. I got it up in that shape and sent it back and asked him to approve it. He did after a while, probably just before Christmas.

Prior to October 1st we had agreed with the Cabinet Manufacturers and Planing Mill Owners in San Francisco we would remove our men from any plant in Oakland that was not paying \$9.00 as of October 1. We removed men from the plants on October 1, and following that Hutcheson was here and around the middle of October they entered into an agreement to pay \$8.50 in six counties. Mr. William L. Hutcheson was here. I don't think Mr. M. A. Hutcheson was here at that time. Mr. William L. Hutcheson came, I think, a little before October 1, 1938, I am not sure. He left, I think, around the middle of October. I cannot recall if he was here in 1937; I am sure he was in San Francisco sometime in that two year period from 1938 to 1936, but I cannot recall definitely when. I do not recall him here in 1936 with regard to the wage contract.

(Testimony of David H. Ryan.)

Pacific Manufacturing Company were unionized and had the label since May 6, 1936. Any materials that came in here with the Union Label would be installed or worked on. I don't recall that in September, 1938, I refused to install or work upon material from Pacific Manufacturing Company; I do not deny it.

After the \$9.00 scale was entered into I went to the General Office in September, 1938, and spoke of the situation that was going to arise with the \$9.00 scale in San Francisco and \$8.00 scale in Pacific Manufacturing Company in Santa Clara, and General Hutcheson said, "Well, that is one big metropolitan district. I think that \$9.00 should be paid in Santa Clara if they are going to ship stuff in here," but when he got out here there was so much turmoil, and Edwards was not paying it, and the P. M. Company took advantage of that, [708] they still had the \$8.00 scale, and they went over to the Exposition Company and grabbed a lot of contracts for a lot of fine work over there, and got away with it, when the other fellows were fighting over what the wage scale was going to be. There was some trouble over it, but I can't recall. They still had the \$8.00 wage, the award was \$9.00 and they came in and got a lot of work with \$8.00, and finished it, too. I don't know whether any of it was tied up, if it was, it was not serious because it had a Label, but because something was alleged to be wrong with the wage scale. If they

(Testimony of David H. Ryan.)

paid \$9.00 they would not object to it, but they felt Hutcheson had made some kind of a ruling that there should be a uniform wage scale, and so far as it had not been made uniform, and that was the trouble.

Mr. Hutcheson expressed the opinion that this was a big metropolitan area and that the scale should be uniform, and I think that is one thing that influenced him to urge upon millmen and cabinet shop men to take \$8.50 instead of \$9.00 in order to get Pacific Manufacturing Company up to that scale, that is actually what happened, but in the interim a lot of disputes arose around here, I can't remember half of them, they were always arguing about something. I don't remember stopping any of their material. It would not be for that reason, it would be something else connected with it, because we had signed a union agreement with them dated May 6, 1936, and had had no trouble at all. If there was some dispute about it they were not complying with the wage scale. I cannot recall stopping it. I won't say it was not stopped by somebody.

I want to make clear that a business agent has authority to go out; if he thinks the agreement is being violated he will say something, "You had better stop this," or something, and I would not know anything about it until somebody lodged a complaint. [709]

The theory is that they work under me. Or-

(Testimony of David H. Ry...

ordinarily they would report back to me they were stopping material. As a matter of fact if you asked me that question it is not the practice to stop the material, we have not a signed Union Agreement to stop them from doing that. I don't know that it was stopped. You asked me the question was it stopped and I said I did not recall. The business agent, whoever he was, never told me about it until Harry Hilp told me about it. I never heard about it until then.

Al Edwards came in and told me about the Yates Company. I cannot remember any other that Al told me about.

I told Mr. Roos that I ~~had~~ heard Grand Rapids get part of the job, or words to that effect. I had a conversation with Mr. Roos before hand. I learned, of course it was evident to everyone, that he was doing quite a bit of remodeling and alteration job, and Brother Edwards knew he was going to put that work in there. All these local employers would probably find out about it. Mr. Ennes knew it, too, it was common knowledge.

I went down to Al Williams. The business agent found Walter Jacoby and his men down in the basement, as I recall it, and he said he had a couple of non-union men, they were getting ready to put in some Grand Rapids fixtures, and I called that to the attention of Al Williams. The business agent got that information, as I recall it, from the men working there for Walter Jacoby.

(Testimony of David H. Ryan.)

My objection was to Walter Jacoby on non-union men. He was always hiring non-union men or something like that. My objection to Mr. Roos was not, it was out-of-state material, but he should buy it in San Francisco. This was out of the city, yes. I was not objecting to the material.

Jacoby had at that time a little bit of shack out on Mission Road, Daly City, maybe 15 by 20 or 30; I don't think [710] Jacoby hired over two or three men, and he used to keep that place locked up and a big dog in there to keep the business agents out. He would hire non-union men if we would not catch up with him; if we did he lived up to it. He had a label of a couple of unions in 1939 and 1940; the Walter Manufacturing Company, and then he moved down to Redwood City and they had trouble with him. He was unionized by two unions, ostensibly.

I kept after Mr. Williams, "Who is going to do the rest of this work, is it going to be done in San Francisco, or who is going to do it?" He said, "How about the Grand Rapids stuff?" I said the Grand Rapids stuff was all right, but how about Jacoby, get him out of there and put some union men in. We talked around there for an hour or two. I wanted to get the statement of Al Williams that all of the rest would be let in San Francisco, and, finally, I don't know whether it was Al's idea or whose idea it was, he said if we would install Grand Rapids fixtures he would agree to let

(Testimony of David H. Ryan.)

us install them with union men, we didn't care whether Jacoby did, we wanted it understood that if he got non-union men in there we would get them off; we would install the Grand Rapids fixtures, and he would see to it that all of the rest of the work was let in San Francisco. I said, "That is fine." Emanuel had some of the work, Mullen, Ostlund & Johnson, I can't recall any more, three or four.

After I got out of the hospital I recall we held a conference with the representatives of Employers and Labor, sometime prior to December. I wrote a letter early in December after we had had a conference just prior to that. I can not recall any particular section they discussed. While I had been away from the office the representatives of the General Office and my people had gotten together on this \$8.50 scale and what they had agreed to and what was understood was something [711] I was trying to find out to whip it into a letter to send on to the general office, an agreement to send to the general office for approval.

Undoubtedly Section 2 was mentioned or talked about in the conference had preceding December 3, 1938, I can't recall that. I don't know who, if anyone, insisted on it being incorporated in the contract. I know that President Hutcheson, way back in July, insisted that it would have to be clarified, go out and be rewritten. Whether that final language was what Hutcheson desired or whether it

(Testimony of David H. Ryan.)

was a compromise between our representatives and the Planing Mill Owners and Cabinet people, I cannot recall at this date, just who insisted on it and who did not.

I cannot state which side between the unions and employers insisted that section 2 remain in. Originally we wanted it in there and explained that if they went outside the shops to get material and manufactured union-made goods, that they should comply with those provisions, that was the original idea, but it was rewritten after president Hutcheson said you could put any interpretation on it, everyone could interpret it to suit his purpose.

“Q. You testified yesterday the original idea was you did not think Mr. Edwards was going to go through with the arbitration and abide by it.

“A. I mean, Mr. Clark, originally, 1936, when it was first written, that no material should be purchased or worked on——”

Section 2, in the arbitration award it is Section 8, was discussed in the arbitration award in Judge Walter Perry Johnson's office by the Board. I told you about the arbitration proceedings and the \$9 that was established, and I made the suggestion then, something along that line, that I was interested in seeing the \$9 scale paid, and then the arbitrator told us to get together and submit something. Then it was brought up by us and submitted. Then after a time elapsed and I got back on

(Testimony of David H. Ryan.)

the job and noticed these had been rewritten, that [712] one was there, too, but I cannot recall just who all participated in those changes. They held meetings when I was not [713] there.

Section 2 was eliminated. This one, No. 8, was substituted for it, carrying in part the same language as I recall it now. I was insisting on it being in there at the start. I cannot recall what happened in November. We had a meeting. I cannot recall at this date just who said what. It was supposed to be a lot of preliminary work done when we got together in the meeting to get the thing drawn up along the lines that the general office would agree to, and that was what evolved out of that conversation. I won't be definite on it at the present time, whether the employers insisted that that remain in or whether the union men did. My recollection at this date is too vague to testify under oath on those things. After all it was drawn up and as I read it section by section that was what had been agreed to in conference. Some of the conferences had been held before I was present.

I testified I had meetings with Mr. Williams. My testimony, "I want to state, before you ask me with reference to the testimony given there, that at no time, to Mr. Al Williams, or Mr. McCreedy, or Mr. Smith did I ever say that we would not install the union-made fixtures with the label of the Brotherhood on them; at no time," is true. I

(Testimony of David H. Ryan.)

never told Mr. Williams I would not install Grand Rapids fixtures or Mr. McCreedy or Mr. Smith. I was present when Mr. Williams testified. His testimony, "What did Mr. Ryan say?" Mr. Williams answered: "Mr. Ryan said the union could not install these fixtures in San Francisco due to the fact that they had been made outside on a low wage scale." Then I asked: "Did he tell you then they would not install the fixtures?" And Mr. Williams answered: "Yes," is definitely, indisputably, not true. I did not state that to him or anybody else.

I can recall one conference with Mr. McCreedy in May [714] of 1938, 1939, at the Sir Francis Drake Hotel. He testified he had one or two with me; that may be so, I don't recall it; I won't deny that, I probably did. I recall one at the Sir Francis Drake Hotel one morning, went up into the mezzanine floor, he wanted to discuss Grand Rapids Fixtures.

"Q. You remember that yesterday you testified on page 1565 on being questioned by your counsel as to whether Mr. McCreedy and you had the following conversation, he quoted Mr. Burdell's question to Mr. McCreedy:

"Q. That is what you said to Mr. Ryan?" Then Mr. McCreedy answered Mr. Burdell by saying: "That is what I said to Mr. Ryan. Mr. Ryan told me, as I recall it, that they could not do that because our labor rate that we paid in Portland was about on the same basis as the labor rate here, and

(Testimony of David H. Ryan.)

that unless our rate was the same they could not work with us on it. And I asked him at that time if we could not work out some arrangement whereby we could pay the San Francisco rate on such work as we shipped into this town, and he said he did not think they would stand for that.

"Did you say that to Mr. McCreedy?"

"A. No, I did not."

I did not tell Mr. McCreedy I could not install those fixtures because they were manufactured at a lower rate than the San Francisco rate. I don't recall all the conversation, but I did not at any time tell anyone that. I never at any time told anyone I would not install fixtures with the Union Label even though they were manufactured at a lower wage rate. I think Mr. Smith was present when Mr. McCreedy had his first meeting with me. I remember Mr. Smith's testimony, I recall he said something to the effect I made the statement we would not install the Grand Rapids fixtures. I did not tell Mr. McCreedy or Mr. Smith in that conversation that an understanding [715] was entered into or an agreement was entered into whereby the local employers agreed to a wage scale which was satisfactory to the unions provided the unions would protect them on outside competition. I have never made the statement to anyone, anywhere, that we would not install union-made fixtures bearing the label of the Brotherhood. If I may explain that to you, I have taken an obligation, and if William

(Testimony of David H. Ryan.)

Hutcheson, president of the Brotherhood of Carpenters, knew that I made that statement he could remove me from office and very likely he would. That is why I am definite in saying that I never said that to anyone..

I don't recall Mr. Hosken, undoubtedly he was there. He is a Grand Rapids man. I did not tell Mr. Hosken the situation was just the same, we would not allow the men to install any of our equipment that had a lower wage scale than that which was prevailing in San Francisco. I think I testified yesterday I did not even recall the Weinstein job; I don't recall it now. I never at any time told anyone that we would refuse to install union-made fixtures made under union conditions.

I know Mr. Bernhardt very well. I did not hear such a statement made at the end of the negotiations that we had overcome all our difficulties up to now, and while it was not specifically put in the agreement that it would be understood that we would have no further trouble with, or trouble with any of the stuff from the North. Mr. Bernhardt, I believe, testified he heard it made. I say I cannot, I don't recall that statement. I recall the meeting.

"Q. Is it your testimony a statement like that was not made?

"A. No, I was not."

I say I don't recall it. Any conference of that kind everybody talks and at the same time, two or three of them talking, and there are a lot of things said which you don't recall who mentioned it. [716]

(Testimony of David H. Ryan.)

There was no oral agreement of any kind with any organization and Bay Counties District Council of Carpenters during the period of 1936 to 1940. Section 2 in the 1936 agreement, so far as I can recall it, said, "It is agreed by both Cabinet shops and Planing mills and representatives of the Brotherhood of Carpenters that no material will be purchased or work done thereon unless made under similar conditions and they should not buy any material made at a lower wage rate." That is the written agreement of 1936, referred to here so often, that the Cabinet Manufacturers and Planing Mill Owners agreed they would not buy material that would not be purchased or work done thereon that was made at a lower wage scale or under different working conditions; that was material they were proposing to bring in to make union-made stuff out of. That agreement we signed.

This agreement, article 2, says, that the cabinet manufacturers and planing mill owners agreed that no material will be bought or work done thereon that required our men to do work thereon, that was made under conditions of a lower wage scale or different conditions, and those are closed shop, union conditions, if they had to have material to complete their cabinet manufacturing or millwork and put a label on it, they would get some that had a label on it before they took it into the shops. They could bring it in from the mill down the street, around the corner; that was the written agreement.

(Testimony of David H. Ryan.)

It had no connection at all with installation of work or any other contractors associations, just those groups and no one else.

“Mr. Clark: Q. You say they might have got it just around the corner. Did the same agreement cover material that came from Oregon and San Diego and Vancouver and everywhere?”

“A. If the cabinet manufacturers were going to buy material, they agreed if they were going to buy those materials to supplement their work and bring them in, there was a stipula- [717] tion—you see, they had been buying it in this district from non-union mills, bringing it in and putting the stamp on it and calling it union material and sending it out under that assumption. There was no argument in there about the Northwest or the Deep South or the East or any place else which they agreed not to handle, but all the argument and dispute was about what was happening right in this district after fourteen years of open shop.”

One mill located here buying from another mill located here and that the men who signed the Union Agreement were going out and buying non-union lumber and bringing it in and making us put a stamp on it. That is what the complaint was. After fourteen years of open shop this District here was loaded up with all kinds of non-union material.

I think I testified that a majority of the mills on September 21, 1936, were unionized. In 1935 and 1936 we were carrying on an organizing campaign

(Testimony of David H. Ryan.)

and we had a big group of planing mills and cabinet shops organized with the label, but outside of that group, especially in Alameda County where there was not any Union agreement, there was a great group of planing mills and cabinet shops paying less than the scale, operating open shop, non-union.

Representatives of the Millmen's Union came to the Union time and again saying that they were not playing the game on the level, they were going around in the district and bringing the stuff in. I don't recall anything mentioned from the North, or East or South or West, so far as that goes they were getting stuff here. That was what was going on in the neighborhood.

I don't think I testified that every mill and cabinet shop was unionized in 1938, I think they were practically all organized. I don't know what I testified to this morning, but they were well organized.

[718]

We put section 17, the restrictive clause and exempt list in the contract of 1938 because there were non-union mills in Contra Costa County. I wouldn't make an estimate on how many were there in 1938, I would not say. Why not leave it in there, even if they were all organized, why not leave it in [719] there as long as they had agreed to it? Why take it out? It stayed in there until President Hutcheson said it was out, and then it was out.

You can organize local men one hundred per cent and leave them alone for a month and some of them

(Testimony of David H. Ryan.)

will be wrong, they cannot stay static. You organize them and they enter an agreement. It is a continual process. You can get union shops today, organize them to use the stamp, and it wouldn't be the same a month from now if you leave them alone. Nobody can be definite about a statement like that, whether it be eight, nine, ten, or nineteen, and that's the truth.

The only agreement is the written agreement I testified to before. There never was, to my recollection and as far as I am concerned, I never entered into an oral agreement; and the only written agreement has been the one submitted and gone over, and there is no other written agreement to my knowledge. There is not any agreement or understanding between the Bay Counties District Council of Carpenters and the other defendants in this case under the terms of which ~~no~~ millwork and patterned lumber will be purchased or worked upon that is manufactured at a lower wage scale regardless of where it is manufactured. There was not to my recollection any such agreement or understanding at any time during the period of 1936 to 1940.

Exhibit No. 2 is the Bay Counties District Council of Carpenters' By-Laws, I am familiar with all of that. I did not write those up. The original was written years and years ago and it has been amended from time to time for the last forty years, to my knowledge. Those are the official By-Laws.

It is true that on Page 29 of such Exhibit, Article 2, section 1 states:

(Testimony of David H. Ryan.)

"It is agreed by the District Council that, in conformity [720] with the agreement between the Mill Owners and Mill Men, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing trade rules, or are paying less than the wage scale hereinbefore quoted, or employing other than union mechanics.

"Section 2. In any shop not entitled to the use of our stamp the members working in that shop shall not be allowed to install its products on the job for which they are manufactured. For violation of this section a member shall be fined.

"Section 3. These conditions shall apply not only to mills within the City and County of San Francisco, but to all mills in the State of California, as well as those of all other states."

I testified that my obligation to the Union required me to respect the label of the Brotherhood and that it is my policy and that of the organization that the material that bears the label must be installed. In some cases material that does not bear the label we have a right under our policy to refuse to work on or refuse to install. We have agreements with all General Contractors and all Home Builders on installation work that we will not refuse to install any kind of material, with or without the label. That is an agreement between the District Council of Carpenters and the Asso-

(Testimony of David H. Ryan.)

ciated General Contractors and the Home Builders, etc. The contractors or home builders had an agreement with them, that they could go out and refuse to install non-union made millwork if they thought it advisable to do so, but if any of them has any contract or agreement we could not.

Under the general policy, the great bulk or practically all installation work, meaning millwork and cabinet work, trim going into a commercial building, manufacturing establishments, [721] residential construction, and under the terms of this agreement if they were to bring in non-union millwork we have to install it, but as a matter of fact ninety per cent of it is union-made here. If it gets on the job, we have to put it up, under the terms of our agreement. That is what we call no stoppage of work, with reference to general contractors and home builders, hardwood floor contractors and all of those.

We do not see it before it reaches the job. If it is fabricated and patterned millwork or cabinet work made in the district, then the millmen see it, but the men that put it up on the job do not see it until it lands on the job.

The business agent of the millmen goes through the shops and yards; but with a mill owner's plant and cabinet manufacturer's plant that is done by the Millmen. I knew about that, they reported it to me, that is their job. If a home builder goes out and brings in a carload of non-union material, we go out and talk to him to get it here, we are con-

(Testimony of David H. Ryan.)

cerned with getting it in San Francisco, but we install it once it gets on the job. When it lands there and the men install it the journeymen, carpenters and foremen do not see it until it lands there.

My organization is composed of delegates from the carpenters unions of four counties, San Francisco, San Mateo, Alameda and Marin. All of those unions have delegates to the Council, and they compose the Council, that includes the millmen.

The millmen fabricate patterned millwork and cabinet work, operate high speed woodwork machinery, work on benches. They do it in shops and they make this millwork in the mills. The carpenters put up the buildings and install that work when they get up to it. There is no difference in skill between carpenters and millmen, but there is a \$2.50 a day difference in wages right now. The outside carpenters are [722] getting the most. That is what all the dispute is about now. The \$8.50 scale we have heard talked about that was established in a compromise is still in effect in this district and the carpenters in the meantime have gone up from \$10.00, which was their scale in 1938, to \$11.00 now, making \$2.50 differential.

Mill operators do not employ carpenters as a matter of common practice. Cabinet Manufacturers, I think, put carpenters on their fixture work. Cabinet Manufacturers take a contract, it is a different type of business. Mill Owners operate planing mills, turning out stock, and special designed work

(Testimony of David H. Ryan.)

and patterned millwork. They sub-contract their work from the general contractors and home-builders to supply so much trim for so many bungalows, and they deliver it on the job and are through with it. Cabinet Manufacturers, that is Commercial Fixture and Store-Front Institute, go out in the business center occupied by commercial houses or where they want to alter premises and make a sketch and estimates for installation of fixtures, etc. They have to be designed to fit the size of the store space, for the display of merchandise or for a special line of merchandise that that commercial man is handling, they have to be made of special design complying with particular requirements, so they contract the whole thing, including electrical wiring, painting, decorating, and what-not. So on installation they employ outside carpenters to install the fixtures.

Under the contract between the General Contractors, Home Builders and Cabinet Manufacturers, as far as the carpenter is concerned it contains this no-stoppage-of-work clause. I do not think the Millmen contracts have any such provision as that. That means once material gets on the job we will install it. I want to modify my reply, I am not sure but what there is some stipulation in the Mill Agreement that there will be no stoppage of work. It is not clear in my mind. [723] I won't answer definitely unless I can see it. It is definitely in all of the others.

(Testimony of David H. Ryan.)

I testified that neither I nor the Council had any agreement that would bar installation of any fixtures in San Francisco that were manufactured outside of San Francisco at a lower wage scale. We have no such agreement definitely. I am certain we had no such agreement between September, 1936, and June 26, 1940. I don't recall if I ever wrote or told anyone we had such an agreement. I have seen a letter, Exhibit 115, but I have never seen the one I wrote. This is a letter from Cook County, Illinois, District Council of Carpenters, addressed to me under date of June 7, 1937, in which he refers to my telling him how we were doing work here, and he wanted to know how we were going to get away from the Interstate Commerce Commission. I would like to see the letter I wrote.

I got the girl to take out everything from the file, and carried them down to my attorney. I said, "Where is that letter I wrote," and they said, "It is gone." I received that letter from Mr. Sand, to the best of my recollection, because it is in my file.

Thereupon the letter was introduced in evidence over the objection that it relates to a contract with the contractors, not a contract with the millmen. The Exhibit was not offered against the Cabinet men on trial, and was marked "Government's Exhibit 183", and was read as follows:

"Ladies and Gentlemen of the Jury, this is a letter on the letterhead of the United Brotherhood of Carpenters and Joiners of America, Cook County,

(Testimony of David H. Ryan.)

Illinois, Offices Third Floor District Council Building, 12 East Erie Street, Chicago, and it is dated June 7, 1937.

“Mr. D. H. Ryan, Secretary,
Bay Counties Council,
Building Trades Temple,
San Francisco, Cal. [724]

“Dear Sir and Brother:

“Replying to your letter of the 1st inst., I wish to advise that the Walgreen Company does not manufacture their own fixtures. They have been letting such work mostly to the Kaszab Company of this City, which company operates a union shop and have the union label.

“The Millmens scale here at present is ninety cents per hour. A new agreement has recently been signed with the Millwork and Cabinet Manufacturers Association. This agreement becomes effective July 1st, 1937 and runs to May 31st, 1938. The minimum wage scale provided for in this agreement is \$1.05 per hour. Time and one half for overtime Monday through Friday, and Saturday from 8 A. M. to 12 o'clock noon. Double time for Saturday afternoon, Sundays and all legal holidays or days celebrated as such.

“I note with interest your statement that your agreement covering all shops and mills in your district makes it impossible for your men to install fixtures from outside made under a lower scale.

(Testimony of David H. Ryan.)

That in my opinion is an excellent means for protecting of home industry and if it can be applied without coming in conflict with the Interstate Commerce Law it should prove highly beneficial to copy from. I shall appreciate if you will send me a copy of your mill agreement.

“Fraternally yours,

CHAS. H. SAND,

Secretary”

“The Court: This question was for the purpose of impeachment, was it?

“Mr. Clark: Yes.

“The Court: The jury will understand, as in the case of the witness yesterday whose testimony was impeached, that this testimony affects only that of the witness who was on the stand.”

I testified neither I nor the Council had any policy [725] that would prevent importation of mill-work from the Northwest. We have an agreement with the San Francisco soft and hardwood lumber dealers covering the employment of lumber handlers and lumber clerks. There is nothing in regard to that in the agreement. We never attempted to make any such agreement with the lumber dealers with respect to the importation of material from the North.

Exhibit 115-40 is a carbon copy of a letter dated May 5, 1938, addressed to:

(Testimony of David H. Ryan.)

“Mr. M. A. Harris,
c/o Van Arsdale-Harris,
5th and Brannan Streets,
San Francisco, California.

“My dear Mr. Harris:

“The Bay Counties District Council of Carpenters would be very glad to have a meeting arranged with the soft wood wood lumber dealers in San Francisco to the end that we might be able to establish, by mutual agreement, a policy regarding the importation of lumber and millwork from the Northwest.

“We are addressing this request to you, knowing that the lumber dealers would respond to a request coming from you for such a meeting more readily than they would from any other lumber dealer in the City.

“If you are favorable to the proposition of such a meeting and feel that it can be arranged, we would like to have you get in touch with our office regarding the matter.”

“I had no idea you were talking about that, because this refers particularly to their agreement to refuse to import non-union lumber made by the CIO.

“Mr. Faulkner: All of this is offered by Mr. Clark as not in any way affecting—

“The Court: I understand it is offered for the purpose of impeachment.

“Mr. Clark: Yes. [726]

(Testimony of David H. Ryan.)

"The Court: And such testimony will affect only the credibility of the witness on the stand."

The letter doesn't mention the C.I.O. but our intention was to stop the non-union lumber manufactured by the C.I.O. That agreement was entered into along that line. It didn't refer to millwork, it referred to—well, there might be some other—my letter says millwork.

"Q. You testified, did you not, that there was no agreement preventing the installation in the San Francisco Bay Area of any material or cabinets, show cases or store fixtures that were not manufactured under conditions complying with the conditions in this area? A. Any agreement to keep those out?"

"Q. Yes. A. Union-made?"

"Q. Yes, any kind. A. No such agreement."

I testified I didn't know of any such agreement of the District Council of Carpenters. I also testified the Cabinet Manufacturers employed millmen, members of 42 and 550, and they also employed carpenters.

The Cabinet Manufacturers, to the best of my recollection, have not signed the Carpenters' agreement entered into May 1, 1941. It is customary for the Cabinet Manufacturers when the new wage scale is set up for the construction work to sign an agreement that they will comply on the construction end of it the same scale paid by the General

(Testimony of David H. Ryan.)

Contractors; they haven't signed up that agreement, but they are complying with it. I think we had such an agreement in 1937, 1938. They were blanket agreements negotiated with the very large groups; the present five year agreement was negotiated between Bay Counties District Council of Carpenters and the Associated General Contractors of Central California. They all sat in as a group.

Representing the Cabinet Manufacturers, Mr. Ennes was one; a group representing Central California Chapter of [727] Contractors, East Bay Contractors, Marin County Contractors, San Mateo County Contractors, Associated Home Builders of San Francisco, General Contractors Association of San Francisco, seven groups, all negotiated the same agreement at the same time at which Commercial Fixture and Store Front Institute was represented by Mr. Ennes.

The agreement in 1936 was negotiated between A.G.C. and Home Builders and the contractors in the East Bay, and that run to around May, 1938. There was one until May, 1940, and I cannot recall all those conferences, who was present, but the last one everybody was in it.

I think in 1937 we had an agreement with the Cabinet Manufacturers for installation, I can't recall it. I don't recall anyone on those negotiations except Mr. Ennes. He was in on all of the negotiations. I don't recall if Mr. Mullen was there. I can't recall anybody but Mr. Ennes, he was there.

(Testimony of David H. Ryan.)

When it comes to negotiating agreements for installation made by Cabinet Manufacturers, they follow the scale set by the contractors, as a rule; they stipulate to that scale whatever it is, the same scale as the General Contractors, the same hours, rates for overtime, and so forth, and general working conditions.

I will repeat neither I or the Council had in 1936, from 1936 to 1940, any agreements, written or oral or otherwise, that prevented the installation of fixtures manufactured outside of the State or outside of the San Francisco Bay Area at a lower wage scale. We have had none during that period.

Exhibit 114-19 is an agreement between Cabinet Manufacturers Institute of Northern California, Northern Division, signed by J. G. Ennes, Bay Counties District Council of Carpenters signed by D. H. Ryan on the 6th day of May, 1938. I think that is the uptown agreement, covering manufacturers, between Cabinet Manufacturers Association and Bay Counties District [728] Council of Carpenters.

Thereupon, over the objection that it wasn't impeaching, a portion of the agreement was read as follows:

"Section 24 of this agreement, which appears at the bottom of page 3, is this:

" 'No carpenter under the jurisdiction of the Bay Counties [729] District Council of Carpenters shall work on the installation of commercial fixtures,

(Testimony of David H. Ryan.)

store fronts, or the structural work incident thereto, unless the contractor undertaking the work has subscribed as a member of an Employers Association or as a Contracting firm, to an Agreement comparable hereto.' "

I spoke of my obligation under the Constitution of the Brotherhood. Exhibit 31, page 23, Section E, reads as follows:

"Paragraph D: 'The jurisdiction of the District Council shall be as provided for by the Constitution and Laws of the United Brotherhood and named in their charter.'

"E District Councils shall have the power to enforce Working and Trade Rules in their respective localities; they cannot make arrangements to debar their members from working for contractors or bosses other than those connected with the Bosses' or Builders' Association.' "

Section 24 from Government's Exhibit 114, is part of the agreement. He could work for any of them nevertheless.

Cross-Examination

By Mr. Tobriner:

Building Trades Council of San Francisco in no way directly participated in the negotiations for either the 1936, the 1938 contracts. I would like to explain that answer because as has been developed in the evidence the conference committee set up between the San Francisco Building Trades

(Testimony of David H. Ryan.)

Employers Association and the San Francisco Building Trades Council selected the Arbitrator to settle the dispute in 1938. At the present time members of the Millmen's Locals and the Carpenter's Locals are members of the Building Trades Council. An agreement was made through the District Council of Carpenters which included the Millmen's Local 42 in San Francisco and came into the Building Trades Council. I participated in [730] working out that agreement when they joined in 1936, as I recall it. I have copies of the agreement. I don't think I have signed originals.

Exhibit CC for identification is a copy, which says: "The Bay Counties District Council of Carpenters proposes that the affiliation of carpenters with the Building Trades Councils in this district be in accordance with the following stipulations." That was accepted by Building Trades Council. They passed a resolution, accepted our affiliation with that list of stipulations covering our affiliation.

Thereupon the document was introduced in evidence as Defendants' Exhibit CC, and the following portion was read:

"The Bay Counties District Council of Carpenters proposes that the affiliation of the carpenters with the Building Trades Council in this district be in accordance with the following stipulations:—

(Testimony of David H. Ryan.)

"Then there are set up some nine stipulations. It is signed, as you will see, by the Bay Counties District Council of Carpenters, D. H. Ryan, Secretary.

"No. 3. That questions directly affecting the interests of the carpenters, such as strike votes, boycotts, trade movements, etc.; that the District Council will exercise its right to determine the action of its membership in the district."

"Then the following:

"No. 5. The carpenters' affiliation with a Building Trades Council will be based upon the recognition by that Council, of the laws, rules and regulations of the Brotherhood of Carpenters; our right to negotiate our own agreements, and that the removal of our members from a job, the levying of fines, or disciplinary action affecting them, will be subject to the approval of the District Council of Carpenters.'"

That agreement was approved, I think, the Fall of [731] 1936. The minutes of Thursday evening, October 1, 1936, showed the date of the action by the Building Trades Council. The documents would indicate the Carpenters' Unions were not members of Building Trades Council when the agreement of September 21, 1936 was signed. Building Trades Council did not participate in 1938 in either negotiation or arbitration, except that a committee composed of delegates to the Council, a joint committee selected the Arbitrator, and after the dispute

(Testimony of David H. Ryan.)

arose, this whole question was discussed referred to here. To that extent they participated. That was only about the wages on the East side of the Bay and this side of the Bay. There was no participation by Building Trades Council in drawing up clause 17, 8 or 7.

W. L. WILCOX,

called for the defendants, was duly sworn and testified as follows:

Direct Examination

By Mr. McKevitt:

I first joined the Millmen's Union in 1921, in Sacramento. I started my career as a millman in Seattle in 1914. I worked in the furniture industry until 1917, spent four years in the Navy and resumed my trade thereafter. I belong to Local 42. I am at the present time the business representative. I was elected to that office in June, 1938, and served for one year; was elected President in 1939, and served for one year, and since that time was re-elected business agent in 1940, and have served ever since.

The duties of the business agent are to call on various shops and mills, check the count of the men employed, see that they belong to the Union, that their dues are paid, take applications if there are any to be had, call on the sick and injured, repre-

(Testimony of W. L. Wilcox.)

sent the injured before the Industrial [732] Accident Commission, settle any disputes that may arise on the jobs in regard to the agreement or working conditions, collect any monies that may be due, represent the membership before the Labor Commission, if there is a dispute in which employers are trying to chisel the men out of wages, make funeral arrangements for any members who have no relatives or heirs, assist relatives or heirs in making funeral arrangements, act in funeral ceremonies under the ritual of the Brotherhood, collect proper salaries and deal with the men who have been violating the terms of the agreement and their obligations as union men.

I see that apprentices attend regularly appointed trade schools as agreed upon by the bosses and the union, that the boys may become more proficient in their trade, as they have to attain a certain percentage of attendance at school, it is my duty to see they attend, get their proper wages when due, and see they are given the proper opportunity to learn their trade in the course of the work day on the machinery and tools, and not used as cheap laborers around the mill.

I was a signatory to the 1938 agreement. I was elected in June and installed in office in July, 1938. Prior to my installation as business agent negotiations concerning that agreement had been completed. I had no part in the negotiations. When I came into the picture the arbitration proceedings were

(Testimony of W. L. Wilcox.)

under way, and there were certain arbitrators handling the matter. I had nothing whatever to do with it. I signed in my capacity as business agent. I did participate in the division of monies that was reached when the scale was reduced from \$9.00 to \$8.50. My duties in that respect were in regard to the fact that the employers had contracts on hand before the new wage scale went into effect. If it had gone in right then it would have cost the employers more than they had figured on to produce the job, and they made claim for what [733] is called old work, and they were put there to complete their old work at the lower scale. They were to pay the new rate of pay; we held the check for the difference between the old and new scale, and turned it in to a committee that was set up for that purpose, and where the claims run over that we repaid it from the monies collected in that manner. I went with the auditor to audit the claims and to do my best to keep the claims of the employers down as low as possible.

I have heard my name mentioned relative to minutes that the Government read. Dougherty Lumber Company came into San Francisco between the first of the year and July, I believe, 1938. They operated here from that time until about a year or a year and a half ago, or shortly after the completion of the second Golden Gate International Exposition. Their mill was operating as a non-union mill. The recitals in which my name was mentioned refer to non-union material.

(Testimony of W. L. Wilcox.)

I know of no verbal, oral or written agreement, secret or otherwise, concerning these unions, either 42 or any other Millmen's Union that involves finished lumber or millwork, and concerning its shipment into California from other states or anywhere out of this State.

"The Court: What was said in the minutes, Mr. McKevitt, so that the jury will understand what the testimony was. I want the jury to understand what it is about.

"Mr. McKevitt: This is under August 16, 1938, Meeting of the Millmen's Union No. 42. 'Business Agent Wilcox reported a car of T&G from Dougherty Lumber Company slipped by and had gone over to the Shoals.'

"Q. That is the same Dougherty Lumber Company you referred to?

"A. That is the same Dougherty Lumber Company." [734]

Cross-Examination

By Mr. Clark:

I was business agent on December 20, 1938. I believe I attended every meeting. My report then, "Plenty material coming into San Francisco, T&G flooring that is coming into San Francisco will be rerun in fair shop" was non-union material. I had some of it rerun. There was an operation actually performed on it, it was actually worked on.

I did not go out to Symon Bros. at any time. I believe I was present on November 28, 1939, when

(Testimony of W. L. Wilcox.)

Mr. Helbing reported about Symon Bros. in the meeting. I do not know who Symon Bros. purchased their material from. I was president of the Union December 12, 1939. I don't recall the report that Symon Bros. agreed to use local millwork and go along with the program.

"Q. It is not your testimony that that did not happen, that that report was not made?

"A. No."

I recall the report on January 16th that "250,000 feet of T.&G. for the Cow Palace coming from the North without the label." There was more non-union. There was a protest about it according to the report that we had on the floor. I can recall something of the report at a meeting of January 23, 1940, at which Mr. Kelly reported, "There is no exemption list and the mills are breaking down conditions by bringing in this material with the label." I can't recall exactly what was said, I would not swear to the date at which anything was said. When I was present the minutes of the preceding meeting were read and approved. I always asked the members if there were any errors or omissions or corrections to be made, and if I heard no objection I ordered the minutes approved as read.

The rerun material spoken about on December 20, 1938, might have been rerun either at the Empire Mills or at Windeler Pipe & Tank Company. The reports were Symon Bros. did not handle union materials during the period involved [735] here. I

(Testimony of W. L. Wilcox.)

did not know.

Material that was rerun was put through a sticker. A sticker is a machine that makes all of the picture mold, casing, anything of that nature.

As business manager my district does not extend to all counties in the Bay Area. My district at that time included San Mateo, San Francisco and Marin Counties. It now includes San Francisco and Marin Counties.

It was necessary to rerun for the use it was to be adapted to. They brought it down to equal thickness. It was run originally as green lumber. Green lumber as it dries will shrink, some will shrink more than others. Before it goes into a building it was all the same thickness and could be properly laid as flooring or roughing or whatever it was used for. The material was tongue and groove, 1½ by 6; it might be used either for flooring or roofing. It was green when it was run in the North in the non-union mills. After it had been laying in the yard in the sun some of it would shrink more than others, it would be various thicknesses. I do not know of any material rerun and no operation performed on it, nothing actually done to it. I do not know Mr. Yates of Buckley Door Company. I heard of people rerunning it. It always went through a machine. I could not testify whether there was anything done to benefit the lumber. I could only testify to those things which actually happened that I saw. It was not necessarily the purpose of re-

(Testimony of W. L. Wilcox.)

running it merely to get the local stamp on it; that was our main purpose. That was our purpose to rerun it so we could put the local stamp on it.

OTTO W. SAMMET,

called on behalf of the defendants, was duly sworn and testified as follows: [736]

Direct Examination

By Mr. Carson, II:

I am a member of Local 42 and have been since 1932. I am employed in a cabinet shop, Ostlund & Johnson; and have been since 1930. I was on committees of Local 42, but never held a paid position. I was on the Negotiating Committee of 1935 and 1936.

A contract of 1935, marked "Defendants' Exhibit N", is the contract I negotiated as a member of the Negotiating Committee. I believe a letter was sent to the various mills and cabinet shops in the San Francisco Bay Area setting out the position of labor with respect to its request to negotiate. Exhibit 2-D, dated April 29, 1935, is a copy of the original letter we sent out.

Thereupon Exhibit 2-D was introduced in evidence and read to the jury as follows:

"Gentlemen:

'As you know, representatives of our Union have met with representatives of your Association, from

(Testimony of Otto W. Sammet.)

time to time during the last two years, endeavoring to arrive at a mutually satisfactory agreement upon wages and working conditions for our members employed in the shops and mills in San Francisco.

"Since the year 1932 when a 20% reduction in wages was imposed on our members, we have worked for the low scale of 70 cents an hour in the hope that we would eventually be able to obtain a wage that would, at least, provide our members and their families with the bare necessities of life.

"In addition to a low wage scale and intermittent employment we have, during the last eighteen months, had to meet a constant increase in the cost of living, with all indications pointing to the conclusion that the trend toward higher prices will probably continue with the continued improvement in business [737] conditions, which is now well on its way.

"We have not failed to note that during the time we refer to, employers in other branches in the building industry have met the situation with advances in the wage scales of their employees.

"We do not refer especially to the employees engaged directly in building construction, although it is humiliating to our members to see hod carriers receiving \$1.10 per hour, cement finishers \$1.12½ per hour, reinforced iron men \$1.12½ per hour, electricians \$1.25 per hour, plasterers and lathers \$1.25 per hour, and bricklayers \$1.50 per hour, while skilled cabinet makers engaged in the fabrication of high class fixtures and millmen en-

(Testimony of Otto W. Sammet.)

gaged in the operation of high speed woodworking machinery are still being paid on a parity with unskilled common laborers.

"We refer more specifically to wage scales in shops whose competitive field is similar to yours. We note that in Sacramento and Fresno where the cost of living is substantially lower than in San Francisco, the scale is 87½ cents per hour in cabinet shops and planing mills.

"In the ornamental iron shops of San Francisco where the field of competition is practically the same as in our local shops and mills, the scale is 90 cents per hour. The collective bargaining agreement between the sheet metal contractors and the sheet metal workers' unions, which has been approved by their divisional code authority but not yet signed in Washington, sets the scale in the sheet metal shops at \$1.10 per hour.

"We recall the time when the wages of our members were comparable to the wages of other mechanics in the industry, and when our cabinet makers and millmen were recognized as being what they are—highly skilled men.

"We have endured the conditions confronting us with [738] fortitude and patience but the facts and circumstances have forced upon us the realization that we cannot, in justice to those dependent upon us for support, any longer acquiesce in the further postponement of this question.

"At a special called meeting of Local Union No. 42, on April 16th, the following action was taken:

(Testimony of Otto W. Sammet.)

"1. Wage scale 90 cents per hour.

"2. Five (5) days to constitute a week's work, from ~~Monday~~ to Friday, inclusive, between the hours from 8 A. M. to 5:00 P. M.

"3. All overtime to be double time.

"4. No work to be done on Saturdays between the hours of 12:00 Noon and 6:00 P. M.

"5. Use of the Union Stamp and Stewardship in the shops and Mills, being mutually beneficial, to be obligatory.

"6. The above rate of pay and working conditions to go into effect on June 1st, 1935, and to continue as long as the carpenters receive the same pay for equivalent hours of work. Should the carpenters at any time receive more pay and/or shorter working hours per day or per week, the same pay and hours and other working conditions of the carpenters shall at the time it goes into effect for them also take effect and apply to all cabinet shops and planing mills.

"We desire to say, in conclusion, that we will be glad to meet with representatives of your Association to discuss the matter with them.

Sincerely yours,

MILLMEN'S UNION NO. 42

.....: President

..... Secretary

"Approved by the District Council of Carpenters, April 17, 1935." [739]

(Testimony of Otto W. Sammet.)

Following the sending of that letter the Negotiating Committee, of which I was a member, arranged to meet the Negotiating Committee of the Employers. On that Committee was Kelly, Mr. Helbing and myself of 42, Mr. Ryan representing Bay District Council of Carpenters and Mr. Ennes representing Cabinet Manufacturers and Mill Owners, not at that time on both sides of the Bay.

We had to go on strike, we could not get along.

The contract, Defendants' Exhibit N, was supposed to run for one year and it had a provision that it could be either changed or modified by either party upon sixty days' notice by either party. I believe there was a notice pursuant to that clause by my Local Union in the early part of 1936, making certain demands for negotiations on a new contract.

I was on the Negotiating Committee in 1936 for Local 42. On the Committee was Mr. Kelly for 42. Mr. Dave Ryan representing Bay District Council of Carpenters, Mr. Ovenberg and Mr. O'Leary represented 550, Jack Hart and I believe, D. W. Edwards, represented the Mill Owners for both sides, and Mr. Ennes represented Cabinet Manufacturers. At that time there were representatives from both sides of the Bay. San Francisco and Alameda Counties were covered by the negotiations in 1936. The main object in 1936 was to raise our wages to a decent level because we had been cut from \$7.50 in 1930 to \$5.60 in 1932, and

(Testimony of Otto W. Sammet.)

we were trying to get our wages back to the original level and we also insisted on a closed shop in order to enforce our label and working conditions, and we tried to shorten working hours in order to put our fellow members on the pay roll because hundreds of them were walking the streets at that time.

These negotiations continued almost three months. The position of the employers relative to the demands of the [740] Union concerning all material bearing the Union Label was, they wanted to get anything that they felt like and they wanted to get it where they could get it and they wanted a free flow of material. When we were negotiating we wanted an absolute closed shop and they told us about the arrangement they had in 1917, that they could not understand what we wanted a one hundred per cent proposition now for because we were only half as well organized as we were in 1917. We finally agreed upon a very small exempt list. Paragraph 16 in Exhibit No. 131, which is the 1936 contract, is the clause that was arrived at in that contract as a result of the negotiations.

The employer group wanted to have whatever is given here on the exempt list. Representatives of the Cabinet Manufacturers were very anxious to have dowels come in and panels, veneer, and things of that kind. Those items are very much peculiar to the cabinet manufacturing business.

To my knowledge the local mills in San Fran-

(Testimony of Otto W. Sammet.)

cisco manufacture their own dowels, but the cabinet shops do not manufacture any dowels, and usually they come from the outside. They come different thicknesses and lengths. They have to buy them by the hundred.

The first part of paragraph 16 states substantially the position taken by the members of the Negotiating Committee for the Local Union. At that time we were just trying to organize and there were quite a number of shops still in town which were not organized, and they would bring them in at a lower standard of wages than they had in their shops, and the working conditions did not come up to the union shops standard, and consequently it was very unfair and hard to control, so we insisted no getting that in there.

The exempt list was not exactly a compromise. I, for my part, being in the cabinet business, conceded that they needed [741] the dowels and as long as we had no proposition to make them I had no objection to it. The last part of paragraph 16 was Mr. Ennes' idea. He insisted on getting it in there. We fought about it but he insisted on it and we let him have his way.

Exhibit 2-E, for identification, is a sample of a dowel referred to. It is one of the dowels regularly used in a cabinet shop. Those in the mills are smooth and have the grooves in the long way. They usually make them themselves in a machine.

Thereupon the dowel was introduced in evidence as "Defendants' Exhibit 2-E."

(Testimony of Otto W. Sammet.)

The grooves are in there to hold the glue, it makes a better appearance. They make them up to sixteen feet long and then cut them off as you need it in the mills.

I am a cabinet maker. Statement in the minutes of Local 42 purported to have been made by me to the effect that Edwards wanted an exempt list, we should not compromise, meant Mr. Edwards wanted everything exempt and we said it is getting longer all the time the longer we negotiate. That is D. N. Edwards from Oakland, Nat Edwards. He was a mill owner and represented the Mill Owners from the Oakland side.

I had no negotiations in connection with the 1938 contract. I didn't serve on any conference or negotiating committee after execution of the 1936 contract. I didn't serve at any time as business agent or officer of my Local Union. My only connection was as Negotiator on the 1935 contract and 1936 contract. During my membership in Local 42 and the year 1938, I entered into no agreement whatsoever, secret, oral or in writing, relative to the shipping into this area of millwork coming from States other than the State of California, with any employer group. I did not know of any such secret or oral agreement. I do not know of any agreements between Local Unions 42, 550, 1956, 262, the Bay Counties District Council and the [742] Employer Defendants in this case other than contracts which have been introduced in evidence and testified to.

(Testimony of Otto W. Sammet.)

Cross-Examination

By Mr. Todd:

I testified in the negotiations in 1936 leading up to the contract marked Exhibit 131, both sides of the Bay were represented, Unions as well as Operators. Alameda County Building Trades Council did not participate in these negotiations in any way whatsoever.

Cross-Examination

By Mr. Zirpoli:

Persons present that negotiated the 1936 contract were Messrs. Kelly, Ovenberg, O'Leary, Jack Hart, D. N. Edwards, and Ennes. I don't recall anybody else. I don't recall if Mr. Mullen was there. I don't believe Mr. Carl Warden was, or Mr. Emanuel. Mr. Warden might have appeared sometime, dropped in at meetings, but I wouldn't know the person.

The main object was the raising of wages and the insistence on the closed shop. Insistence on the closed shop was the only way we could protect our standing on wages. I tried to have all the people who worked in the mills and cabinet shops, members of either Local 42 or Local 550. That fight is still going on.

We started negotiations about May, 1936, concluded the contract in September. Question of the closed shop was continuously an object. Question of the closed shop was not conceded until the day they actually signed the agreement, that was just

(Testimony of Otto W. Sammet.)

about the size of it. I would say the issue of the closed shop was not definitely conceded until September. It might have been settled one day and the next day it was not settled. It wasn't really settled until the contract was [748] signed, to settle it definitely so far as the contract was concerned.

Most likely I attended a meeting of my Union on June 23, 1936. Mr. Helbing is a member, I think he was over there at the meetings with the Cabinet Manufacturers, for some time, but he had nothing to do with the final arrangements. It is possible I made a report to my own union on June 23, 1936. Most likely I did. If it appears in the minutes of June 23, 1936 that "Brother Sammet furthered B. A. Helbing's report on the meetings with the mill owners and cabinet manufacturers outlining in detail some of the issues discussed", it is correct.

I said the employers stated their position and they wanted a free flow of everything, regardless as to its source. I understand the dowels were made outside of this territory. The exempt list was the mill owners and Mr. Ennes' idea. I wouldn't recall what Mr. Ennes said in that regard, word for word. In substance he didn't want to be handicapped by anything so he wanted certain exemptions in there. Mr. Ennes talked about those dowels coming in and wanted to have a free flow of those dowels here in this territory, he didn't want to be handicapped. The reason he gave for the entire exempt list was something similar. Those

(Testimony of Otto W. Sammet.)

things lasted almost three months and we had one point settled one day and always tore it open after that a dozen times.

I answered I knew of no agreement, secret or oral, with any mill worker or cabinet manufacturer with relation to shipping of millwork from out of this State whether it bore a union stamp or not. I knew of the coming in of merchandise that was being stopped from out of the State only by hearsay. I had nothing to do with it personally. I didn't exactly hear such things at the union meetings. Once in a while you would hear a rumor, but I don't pay attention to rumors. [744]

I don't recall if I was appointed to meet with a committee of Millowners with relation to hot cargo. I don't recall any meeting with the owners at all. I might state at this time I was working hard and I was on every committee that existed, if I was present or not present. I had nothing whatever to do with the 1938 contract. I don't believe I was appointed on a committee in our group at the union meeting of January 18, 1938 to formulate plans for a new agreement. I couldn't say if I was present at the meeting on January 18, 1938. The minutes of January 18, 1938 look like I was named, but I don't recall that I served on that committee. I may have been there a few times but I won't deny it and I won't say yes.

My activities just about ended with the 1936 contract. I was thoroughly disgusted with it. After

(Testimony of Otto W. Sammet.)

that I took no activity. The reason was, mainly, because when those negotiations were going on we had to work all day and the negotiations went on at night and would last until twelve, one or two o'clock; the room was full of smoke; you could hardly see the next fellow, and I don't smoke so I had considerable headache the next day. [745]